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

JENA HECKER, on behalf of herself and others similarly situated, Plaintiffs, v. EASY HEALTHCARE CORPORATION Defendant.	)	Case No. 1:21-cv-0349

PLAINTIFF'S MEMORANDUM IN SUPPORT OF HER UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF STIPULATION OF SETTLEMENT AGREEMENT AND RELEASE

Plaintiff Jena Hecker ("Plaintiff"), with the consent of Defendant Easy Healthcare Corporation ("Defendant" or "EHC"), respectfully moves this Court under Rule 23(e) for preliminary approval of the parties' class action settlement. Plaintiff hereby provides this Memorandum in Support filed along with her Unopposed Motion for Preliminary Approval of Stipulation of Settlement Agreement and Release.

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I. Introduction

After more than two years of litigation, and as a result of arm's-length negotiations under the supervision of JAMS mediator Sidney Schenkier, the parties agreed to resolve this matter which brings claims of breach of contract, common law fraud, and statutory fraud under the Illinois Consumer Fraud & Deceptive Business Practices Act, 815 ILSC § 505/1, *et seq*. (hereafter "ICFA"). Under the terms of the settlement, Defendant will create a settlement fund to pay all eligible iPhone and Android users of Defendant's "Premom" application ("the App"). Eligible class members will be those persons who registered the App and who purchased a new router and/or new iOS or Android smart phone as specified as a result of their concern that Defendant's App violated their privacy. The total Gross Settlement Fund will be capped at $750,000. From the Gross Settlement Fund, proceeds will be used to pay third-party administration costs, Plaintiff's requested service award of $2,000, Plaintiff counsel's requested attorneys' fees of $150,000 (20% of total fund), and Plaintiff counsel's incurred litigation costs of $2,685. From the resulting Net Settlement Fund, all "Participating Class Members" will receive a pro-rated portion of the remaining proceeds, not to exceed thirty dollars ($30.00) each.

Plaintiff and her counsel firmly believe the settlement is fair, reasonable, adequate, and – given the economic reality of the Defendant – in the best interests of the Participating Class Members. Accordingly, Plaintiff respectfully requests that this Court enter an order preliminarily approving the settlement, in the form agreed to by the parties.

II. Factual and Legal Background

As part of its business of providing various healthcare products to consumers, Defendant EHC created and offered an application for personal electronic devices called "Premom." Defendant offered this App to users – such as Plaintiff and the other class members – to

download and use free of charge. The Premom App acts as an ovulation tracker, period calendar, and fertility tool. (*See* Doc. 63, Third Amended Complaint, ¶¶ 10-12). In February 2020, Plaintiff Hecker downloaded and registered to use the Premom App. Like all of the other class members who downloaded and registered the Premom App onto their iOS or Android operating systems, Plaintiff and Defendant entered into a "Terms of Service Agreement" provided by Defendant. The Terms of Service Agreement incorporates by reference Defendant's Privacy Policies. (*Id*. at ¶¶ 15-17). Relevant to this action, Defendant's Privacy Policies state that Defendant would not share users' personal information with any third parties without the users' consent. (*Id*. at ¶¶ 20-40).

In August 2020, Plaintiff learned that Defendant had allegedly shared her and other class members' personal information with certain third parties without their consent. The third parties were two entities that had provided Defendant with software development kits for Defendant's Premom App. Plaintiff alleges that as a result of this alleged breach of Defendant's Privacy Policies, she and the class members were damaged. She further alleges that the only manner in which she and other class members can remedy themselves is to replace their routers and/or iOS and Android cell phones. (*Id*. at ¶¶ 43-57).

Plaintiff filed her initial Complaint in this matter on January 21, 2021. (Doc. 1). On April 5, 2021, Plaintiff filed her Second Amended Complaint. (Doc. 17). Finally, after obtaining leave of Court, on May 12, 2023, Plaintiff filed her operative Third Amended Complaint. (Doc. 63). Plaintiff brings a class action against Defendant on behalf herself and all other similarly situated class members who downloaded Defendant's Premom App onto their iPhone or Android devices. In this action, she brings three causes of action against Defendant: (I) Breach of

Contract; (II) Fraud; and (III) Violation of Illinois Consumer Fraud & Deceptive Practices Act, 815 ILSC § 505/1, *et seq*. (*Id*. at ¶¶ 71-102).

Defendant denies any wrongdoing and denies that it violated its Privacy Policies and/or shared Premom App's users' personal information with third parties without the users' consent. Defendant also denies that any class could be certified for litigation purposes, including because it maintains that actual members of the putative class cannot be ascertained, and because common questions of fact and law do not predominate over individual questions. Nonetheless, Defendant recognizes the risk of further litigation, and the parties worked together with the mediator's assistance to reach a settlement.

III. Summary of the Settlement

The Settlement between Plaintiff and Defendant resolves this matter on behalf of the following class ("Settlement Class Members"):

> All persons located in the United States who have registered to use EHC's Premom application onto their smart phones, tablets, or laptop computers with the Android or iOS operating software systems.

To compensate Settlement Class Members, Defendant will create a Gross Settlement Fund not to exceed $750,000. Settlement Class Members will receive compensation from the Net Settlement Fund, which is the remaining amount of the Gross Settlement Fund after deduction of: (a) Court approved attorneys' fees in the requested amount of $150,000 (representing 20% of the Gross Settlement Fund) and incurred litigation costs of $2,685; (b) Court approved service award to Plaintiff in the requested amount of $2,000; and (c) payment for the Third Party Administrator's costs and expenses. Any unused and/or unallocated monies in the Net Settlement fund shall revert back to Defendant.

Each Settlement Class Member who submits a valid "Claim and Release" form—along with all required documentation set forth in the Notice—by the Claim Deadline shall be entitled to a pro-rated portion of the Net Settlement Fund, not to exceed thirty dollars ($30.00) each. A third-party class administrator will be responsible for emailing the Notice of the parties' settlement directly to Settlement Class Members, establishing and maintaining a dedicated settlement website where Settlement Class Members may find relevant information and access important case documents, and processing Settlement Class Members' claims and requests for exclusion. To that end, the parties have selected Kurtzman Carson Consultants, L.L.C. to act as the class administrator here.

Settlement Class Members will be afforded the opportunity to exclude themselves from the Settlement should they choose to do so. Likewise, any Settlement Class Member who wishes to object to the settlement will be provided the opportunity to do so. Upon this Court's entry of a final judgment, Plaintiff and each non-excluded Settlement Class Member will release certain claims they have relating to the downloading of Defendant's Premom App onto their Android or iOS smart phones, tablets, or laptop computers.

IV. Argument

A. This Court should certify the Settlement Class under Rule 23 for settlement purposes.

Plaintiff must satisfy the four requirements of Rule 23(a) – numerosity, commonality, typicality, and adequacy of representation, as well as Rule 23(b)(3). And particularly because Plaintiff seeks certification in the context of a settlement, these requirements are readily satisfied. *See*, *e.g.*, *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997) ("Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems[.]").

1. The members of the Settlement Class are sufficiently numerous.

The first requirement of Rule 23(a) is that the class must be "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). "Where the class numbers at least 40, joinder is generally considered impracticable." *Simpson v. Safeguard Props., LLC*, No. 13-2453, 2014 WL 4652336, at *2 (N.D. Ill. Sept. 17, 2014). Here, Defendant has identified approximately 1,944,581 persons located within the United States who registered Defendant's Premom application onto their Android or iOS smart phones, tablets, or laptop computers. The numerosity requirement is therefore easily met.

2. Questions of law and fact are common to the Settlement Class.

Rule 23(a)(2) requires the existence of common questions of law or fact. A common question is one where "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." *Mullins v. Direct Digital, LLC*, 795 F.3d 654, 673 (7th Cir. 2015). "The test for commonality is not demanding." *Lightbourn v. Cnty of El Paso, Tex.*, 118 F.3d 421, 426 (5th Cir. 1997), *cert denied*, 522 U.S. 1052 (1998). Certification is appropriate in situations where the "issues involved are common to the class as a whole," and where they "turn on questions of law applicable in the same manner to each member of the class." *Califano v. Yamasaki*, 99 S. Ct. 2545, 2257 (1979).

This case presents a host of common questions, as Settlement Class Members' claims stem from the same factual circumstances: downloading Defendant's Premom application onto their Android or iOS smart phones, tablets, or laptop computers. Common questions of law and fact include, *inter alia*:

- Did Class Members enter into a contractual agreement with Defendant via its Terms of Service and Privacy Policy agreements?

- Did the Defendant provide access to the Class Members' personal information to certain third parties?
- Was the data allegedly shared by Defendant with certain third parties a breach of its Privacy Policies or a permitted exception under those Policies?
- Did the Class Members suffer damages as a result of any alleged breach of contract?
- Have the Class Members met all of the necessary elements to assert fraud under Illinois common law and under the ICFA?

Responses to these questions are common for all class members, and responses to them would uniformly apply to determining their claims.

3. Plaintiff's claims are typical of Settlement Class Members' claims.

Typicality requires that "the claims or defenses of the representative parties are typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). This requirement "directs the district court to focus on whether the named representatives' claims have the same essential characteristics as the claims of the class at large." *Muro v. Target Corp.*, 580 F.3d 485, 492 (7th Cir. 2009). Here, Plaintiff and the Settlement Class Members share the same essential claims, as they all downloaded Defendant's Premom App onto their Android or iOS smart phones, tablets, or laptop computers. Plaintiff was allegedly harmed in the same way as each member of the Settlement Class – having personal data allegedly shared with third parties without their consent – so her claims are typical of the claims of the Settlement Class.

4. Plaintiff and her counsel will continue to fairly and adequately protect the interests of the Settlement Class.

Next, the Court must determine if "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). To adequately represent a class, a named plaintiff must show that she can act in a fiduciary role representing the interests of the class, and that she has no interests antagonistic to those of the class. *See Chapman v. Worldwide*

Asset Mgmt., L.L.C., No. 04-7625, 2005 WL 2171168, at *4 (N.D. Ill. Aug. 30, 2005). As set forth above, Plaintiff's claims are aligned with those of the Settlement Class, so she has every incentive to vigorously pursue their claims, as she has done to date. In addition, Plaintiff retained the services of counsel who are well-versed in collective and class action litigation. Proposed class counsel also satisfy the considerations of Rule 23(g) and should be appointed accordingly. *See*, **Exhibit A**, Firm resume for Donelon, P.C.

5. Common questions predominate over any individualized issues.

Rule 23(b)(3) predominance "tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Amchem Prods., Inc.*, 521 U.S. at 623. Where common questions "predominate," a class action can achieve economies of time, effort, and expense as compared to separate lawsuits, permit adjudication of disputes that cannot be economically litigated individually, and avoid inconsistent outcomes, because the same issue can be adjudicated the same way for the entire class. Fed. R. Civ. P. 23(b)(3), advisory committee's note (1966).

Here, the common questions among class members are whether they registered Defendant's Premom App to their Android or iOS smart phones, tablets, or laptop computers; whether their personal data was shared with third parties without their consent; whether that alleged sharing of personal data with third parties was a breach of Defendant's Terms of Service and Privacy Policies; and, whether ascertainable damages resulted from the Defendant's alleged conduct. Because the Defendant's Terms of Service and Privacy Policies were the same for all the class members, there are no individualized consent issues that could predominate. In other words, whether Defendant is liable is not an individual issue among class members.

6. Class treatment is superior to other available methods for the fair and efficient adjudication of the Settlement Class's claims.

Rule 23(b)(3) additionally requires a determination 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). To do so, a court may consider: (1) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (2) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (3) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (4) the difficulties likely to be encountered in the management of a class action. *Id*.

Litigating an alleged illegal sharing of downloaded information with unapproved third parties such as here is superior to litigating them in successive individual lawsuits. Resolution of the common legal and factual issues on a class-wide basis, rather than in thousands of individual lawsuits (which in fact may never be brought because of their relatively small individual value), would be an efficient use of both judicial and party resources. And here, no single class member has an interest in controlling the prosecution of this action because the claims are identical, as they all arise from the same standardized conduct, and they result in uniform damages based on the alleged violations and remedies. A class action therefore is the superior method to adjudicate all aspects of this controversy.

7. As Plaintiff defines the Settlement Class by reference to objective criteria, the Settlement Class is ascertainable.

Because "[t]he criteria referenced in the class definition are objective and are not necessarily determinative of the ultimate issue of liability," the class is properly defined and ascertainable. *Young v. Nationwide Mut. Ins. Co.*, 693 F.3d 532, 539 (6th Cir. 2012). The proposed class definition identifies a group of individuals allegedly harmed in a particular way,

during a specific time period. *See Gehrich v. Chase Bank USA, N.A.*, 316 F.R.D. 215, 227 (N.D. Ill. 2016) ("Given the Seventh Circuit's disavowal of the heightened ascertainability requirement adopted by some other circuits, the class here is easily ascertainable."). Defendant is able to identify each class member from company data by their last known email address. Therefore, these class members can have notice of this settlement to this address.

B. This Court should preliminarily approve the settlement as fair, reasonable, and adequate under Rule 23(e).

"Federal courts naturally favor the settlement of class action litigation." *Isby v. Bayh*, 75 F.3d 1191, 1196 (7th Cir. 1996); *see also Armstrong v. Bd. of Sch. Dirs. of Milwaukee*, 616 F.2d 305, 313 (7th Cir. 1980), *overruled on other grounds by Felzen v. Andreas*, 134 F.3d 873 (7th Cir. 1998) ("Settlement of the complex disputes often involved in class actions minimizes the litigation expenses of both parties and also reduces the strain such litigation imposes upon already scarce judicial resources."). While settlements are favored, Rule 23(e) requires that the Court make a preliminary determination of fairness:

> Review of a proposed class action settlement generally involves two hearings. First, counsel submit the proposed terms of settlement and the judge makes a preliminary fairness evaluation. In some cases, this initial evaluation can be made on the basis of information already known, supplemented as necessary by briefs, motions, or informal presentations by the parties. If the case is presented for both class certification and settlement approval, the certification hearing and preliminary fairness evaluation can usually be combined …. The judge must make a preliminary determination on the fairness, reasonableness, and adequacy of the settlement terms and must direct the preparation of notice of the certification, proposed settlement, and date of the final fairness hearing.

MANUAL FOR COMPLEX LITIGATION § 21.632 (4th ed. 2004).

Then, after concluding its preliminary fairness evaluation, certifying the Settlement Class for settlement purposes, and directing the issuance of class notice, the Court holds a final fairness

hearing to determine whether the proposed settlement is truly fair, reasonable, and adequate. *See* MANUAL FOR COMPLEX LITIGATION § 21.633-34.

Correspondingly, preliminary approval requires only that this Court evaluate whether the proposed settlement "is within the range of possible approval." *Armstrong*, 616 F.2d at 314. Nonetheless, and with the understanding that a full fairness determination is not necessary at this early stage, the Seventh Circuit has identified a handful of factors to assess whether a settlement proposal is fundamentally fair, reasonable, and adequate: (1) the strength of the plaintiff's case compared to the terms of the proposed settlement; (2) the likely complexity, length and expense of continued litigation; (3) the amount of opposition to settlement among affected parties; (4) the opinion of competent counsel; and (5) the stage of the proceedings and the amount of discovery completed. *Synfuel Techs., Inc. v. CHL Express (USA), Inc.*, 463 F.3d 646, 653 (7th Cir. 2006).

As well, Rule 23(e) requires consideration of several additional factors, including whether the class representative and class counsel have adequately represented the class, and whether the settlement treats class members equitably relative to each other. Each relevant factor supports the conclusion that the settlement here is fundamentally fair, adequate, and reasonable.

1. The strengths of Plaintiff's case and the risks inherent in continued litigation and securing class certification favor preliminary approval.

"[A]n integral part of the strength of a case on the merits is a consideration of the various risks and costs that accompany continuation of the litigation." *Donovan v. Estate of Fitzsimmons*, 778 F.2d 298, 309 (7th Cir. 1985), *on reh'g sub nom. Sec'y of Labor v. Fitzsimmons*, 805 F.2d 682 (7th Cir. 1986). Here, significant risks and costs lay ahead, as the parties vehemently disagreed about the merits of the claims and the propriety of class certification in contested litigation. Absent settlement, Defendant was certain to oppose the certification of any litigation class – as opposed to the Settlement Class presented here – and

likely would have opposed summary judgment for Plaintiff and/or sought summary judgment for itself. Trial remained a distinct possibility, and likely appeals thereafter. And to be pragmatic, the Defendant's overall economic viability and ability to pay a verdict and subsequent judgment—as discussed thoroughly among the parties and mediator—played a sizable role in the parties' decision to settle for the terms outlined here.

Additional litigation would have been costly, time consuming, and ultimately risky. *See Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 586 (N.D. Ill. 2011) ("The costs associated with discovery in complex class actions can be significant."). The complex issues encompassed by this action, together with the length of time and expense likely necessary to resolve this case by continued litigation, weigh in favor of preliminary approval. *See Vought v. Bank of Am., N.A.*, 901 F. Supp. 2d 1071, 1092 (C.D. Ill. 2012) ("Overall, the significant complexity of the issues this case presents, the increased length of time that would be necessary to resolve this case by continued litigation, and the corresponding dramatic increase in costs weigh in favor of approving the proposed settlement.").

2. The stage of these proceedings and experience and view of counsel favor preliminary approval.

During the pendency of this litigation, the parties were able to assess the relative strengths and weaknesses of their positions, and to compare the benefits of the proposed settlement to further litigation. Early on, Defendant moved to dismiss Plaintiff's cause of action on the grounds of lack of standing and lack of ascertainable damages. (*See*, Doc. 20). The Court denied Defendant's motion to dismiss, finding Plaintiff's allegations sufficient to state her claims for breach of contract and fraud. (Doc. 31). However, the underlying issues still remain to be resolved through summary judgment and/or jury trial. The parties subsequently engaged in

written discovery, Plaintiff retained a consulting expert, and the parties later agreed to mediate with JAMS mediator Sidney Schenkier, culminating in the agreement now before this Court.

Plaintiff's counsel brings substantial experience litigating – and resolving – class actions. *See*, Exhibit A, Donelon, P.C. firm resume. Counsel and the Court are therefore adequately informed to evaluate the fairness of the settlement. To that end, both Plaintiff and her counsel firmly believe that the settlement is fair, reasonable, and adequate, and in the best interests of the Settlement Class. *See Accord Swift v. Direct Buy, Inc.*, 2013 WL 5770633, at *7 (N.D. Ind. Oct. 24, 2013) ("[A]s the Court has already noted, the 'opinion of competent counsel' supports a determination that the settlement is fair, reasonable, and adequate under Rule 23.").

3. The cash relief afforded by the settlement favors approval.

In evaluating the fairness of the consideration offered in settlement, it is not the role of the Court to second-guess the negotiated resolution of the parties. As the Ninth Circuit wrote:

> The court's intrusion upon what is otherwise a private, consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.

Hanlon v. Chrysler Corp., 150 F.3d 1011, 1027 (9th Cir. 1998).

Here, Defendant has agreed to pay up to $750,000 into a common fund to resolve this matter. Despite the obstacles Plaintiff faced, she and her counsel negotiated a settlement that provides meaningful compensation for the Settlement Class given the damages alleged to have been suffered. As discussed above, Plaintiff alleges that certain personally identifiable information (*e.g.*, exact geolocation, list of applications used, consumer activity) was improperly shared by Defendant with certain third parties, in violation of Defendant's Privacy Policies. Defendant adamantly denies these allegations, and to be fair, at this point the allegations have

not yet been proven. The damages Plaintiff alleges is that due to this nonconsensual sharing of information with third parties, a new router and/or cell phone needs to be purchased in order to prevent more data from being shared. Again, allegations of potential damages that Defendant denies and have yet to be proven.

Through this settlement, each participating Settlement Class member will be entitled to a pro rata cash payment of up to $30 as reimbursement for having replaced their cell phone and/or router if in fact they did so as a result of having downloaded Defendant's Premom App.[1] This amount of money will not fully reimburse the Settlement Class for the total costs of replacing their cell phone and/or router, but it will provide a meaningful offset. This offset is fair and reasonable, considering it provides certainty and particularly because of the Defendant's precarious financial condition. *See Molinari v. Financial Asset Mgmt. Sys., Inc.*, 18-cv-01526, 2021 WL 5832788, at *6 (N.D. Ill. Nov. 22, 2021) (Finding compromise settlement fair and reasonable, particularly "in light of Defendant's reportedly low net worth"); *Charvat v. Valente*, No. 12-CV-05746, 2019 WL 5576932, at *6 (N.D. Ill. Oct. 28, 2019) (Noting "a settlement does not need to provide the class with the maximum possible damages in order to be reasonable").

In comparison to other consumer-related class actions alleging relatively minimal individual damages, the pro rata payout of up to $30 for each Settlement Class member is fair and reasonable. *See*, *e.g.*, *Charvat*, 2019 WL 5576932, at *6 (Approving payout to participating

[1] The purpose of this settlement is to provide compensation to class members who bought new routers and/or cell phones because of their concern that the Premom App violated their privacy. Therefore, Settlement Class Members must submit a short, straightforward claim form with the required verification to participate in any recovery. For this reason, and because of the substantial class member size and relatively low damages, the parties anticipate an overall lower claims rate, albeit one that is still reasonable in the circumstances. *See e.g., Bayat v. Bank of the West*, 2015 WL 1744342, at *6 (N.D. Cal. Apr. 15, 2015) (finding class settlement in TCPA claim to be fair, adequate, and reasonable where there was only a 1.9% claim rate for damages).

class members of $22.17 as fair and reasonable in TCPA class action); *Pelzer v. Vassalle*, 655 F. App'x 352, 357 (6th Cir. 2016) (Affirming payout to participating class members of $18.75 as fair and reasonable in FDCPA class action); *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 940 (9th Cir. 2015) (Affirming payout to participating class members of $12 coupons as fair in alleged unfair competition class action); *In re Checking Acct. Overdraft Litig.*, 830 F. Supp. 2d 1330, 1346 (S.D. Fla. 2011) (Approving class member payouts "between 45 percent and 9 percent of the total potential damages" in alleged illegal overdraft class action).

Also, other relief was obtained for users of the Premom App as a result of Plaintiff's litigation that goes beyond cash remuneration. While Defendant disagrees with the allegations asserted in this matter, it has subsequently taken steps to ensure that Premom App users are fully informed and that any personally identifiable information that may be shared is fully disclosed in the App's privacy policies.

4. The remaining Rule 23(e)(2) factors support preliminary approval.

Finally, consideration of the factors set forth in Rule 23(e) likewise supports preliminary approval. More specifically, Rule 23(e)(2) requires courts to consider whether (A) the class representative 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, taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorneys' fees, including timing of payment; and (iv) any

agreement required to be identified under Rule 23(e)(3);[2] and (D) the proposal treats class members equitably relative to each other. Fed. R. Civ. P. 23(e)(2).

Several of these factors – such as whether the proposal was negotiated at arm's length, and whether the relief provided to the Settlement Class is adequate – are already addressed above. Beyond that, Plaintiff was, throughout this matter, committed to acting in the best interests of Settlement Class Members, and staying updated on the case through regular discussions with her counsel. She reviewed her pleadings, responded to written discovery requests, participated in mediation, and made all necessary decisions required of her in the best interests of Settlement Class Members. *Id*.

Rule 23(e)(2)(D) requires that this Court confirm that the settlement treats all class members equitably. According to the Advisory Committee's Note, courts should consider "whether the apportionment of relief among class members takes appropriate account of differences among their claims, and whether the scope of the release may affect class members in different ways that bear on the apportionment of relief." Fed. R. Civ. P. 23(e), advisory committee's note (2018). To that end, all Settlement Class Members have the same legal claims, and each participating Settlement Class Member thus will be treated equitably, as he or she will receive up to $30 each from the Net Settlement Fund. Moreover, the release affects each Settlement Class Member in the same way, as everyone will release the same claims. As such, this factor supports preliminary approval. *See Hale v. State Farm Mut. Auto. Ins. Co.*, No. 12-660, 2018 WL 6606079, at *5 (S.D. Ill. Dec. 16, 2018) ("This proposal is fair and equitable because the class members' interests in the Avery judgment were undivided when they were lost

[2] The only operative agreement between the parties is the Settlement Agreement, which is attached as **Exhibit B**. *See* Fed. R. Civ. P. 23(e)(3) ("The parties seeking approval must file a statement identifying any agreement made in connection with the proposal.").

and, thus, each class member's damages were identical. The proposed Settlement therefore entitles each class member to an equal, pro-rata share of the Settlement fund.").

C. The proposed notice program complies with Rule 23.

Pursuant to Rule 23(e), a court must, upon preliminary approval, "direct notice in a reasonable manner to all class members who would be bound" by the proposed settlement. This notice must be the "best notice practicable," *see* Fed. R. Civ. P. 23(c)(2)(B), which means "individual notice to all members who can be identified through reasonable effort." *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974).

Here, the parties agreed to a notice program to be administered by a well-respected third-party claims administrator, Kurtzman Carson Consultants LLC. Through the notice program, Kurtzman will use all reasonable efforts to provide direct email notice to potential Settlement Class Members, in the forms attached as exhibits to the Settlement Agreement. *See* Ex. B. The parties jointly believe that notice by email is the most effective way to reach potential Settlement Class Members in this case. When downloading and using Defendant's Premom application, Settlement Class Members were required to provide a valid email. They were not required to provide a physical mailing address or telephone number. Given that people typically maintain their email addresses for long periods of time and because the claims cover a relatively recent time period, the parties believe that email notice will effectively reach the most Settlement Class Members. Following this Court's Order granting preliminary approval, Defendant will provide Kurtzman with the names and last known email addresses of the Settlement Class Members.

In addition to emailing the Notice and Claim forms to the Settlement Class Members, Kurtzman will establish a dedicated settlement website where Settlement Class Members can review relevant documents and submit claims. To submit a valid claim, a Settlement Class

Member must certify and provide proof of purchase that they (i) purchased a new router between August 21, 2020 and 60 days from the notice being emailed, or (ii) bought an iOS or Android smart phone within 60 days from the date of the notice being emailed. Settlement Class Members must also certify that their purchase of a new iOS or Android smart phone or router was because of their concern that the Premom App violated their privacy. In addition to the website, Kurtzman will establish a toll-free telephone number where potential Settlement Class Members may obtain information about the Settlement.

The ultimate goal of the notice program is to make it as convenient as possible for deserving Settlement Class Members to learn of, and participate in, the Settlement. The subject notice program complies with Rule 23 and due process. *See* Fed R. Civ. P. 23(c)(2)(B); *see also Bonoan v. Adobe, Inc.*, 2020 WL 6018934, at *2 (N.D. Cal. Oct. 9, 2020) ("This Court approves the form and substance of the proposed notice of the class action settlement, which includes postcard notice, publication notice, a physical claim form, and the question-and-answer notice and online claim form, which will appear on the dedicated settlement website.").

D. Counsel's proposed request for fees and reimbursement of costs.

"In a certified class action, the court may award reasonable attorneys' fees … that are authorized by law or by the parties' agreement." Fed. R. Civ. P. 23(h). District courts have discretion to choose between awarding a reasonable percentage of a common fund or awarding a reasonable lodestar (which essentially boils down to reasonable hours multiplied by reasonable rates). *Americana Art China Co. v. Foxfire Printing and Packaging, Inc.*, 743 F.3d 243, 247 (7th Cir. 2018) ("We therefore restate the law of this circuit that in common fund cases, the decision whether to use a percentage method or a lodestar method remains in the discretion of the district court.").

Because Defendant is agreeable to paying a specific sum to all class members in exchange for release of liability, equitable principles permit this Court to "determine[] the amount of attorney's fees that plaintiffs' counsel may recover" from the fund "based on the notion that not one plaintiff, but all those who have benefitted from litigation should share its costs." *Florin v. Nationsbank of Ga., N.A.*, 34 F.3d 560, 563 (7th Cir. 1994) (citations omitted). To determine whether a requested fee award is reasonable, courts "must balance the competing goals of fairly compensating attorneys for their services rendered on behalf of the class and of protecting the interests of the class members in the fund." *Skelton v. Gen. Motors Corp.*, 860 F.2d 250, 258 (7th Cir. 1988). In the Seventh Circuit, there is a presumption that "attorneys' fees awarded to class counsel should not exceed a third or at most a half of the total amount of money going to class members and their counsel." *Pearson v. NBTY, Inc.*, 772 F.3d 778, 782 (7th Cir. 2014).

Proposed class counsel intends to formally apply to the Court for payment of attorneys' fees and costs from the Gross Settlement Fund. Under the parties' Settlement Agreement, the total fees sought shall not exceed $150,000 (representing ***20%*** of the Gross Settlement Fund). The total incurred costs sought for reimbursement will be $2,685. *See*, Ex. B. A fee request of twenty percent such as here is presumptively valid. *Pearson*, 772 F.3d at 782. *See also*, *In re Sears, Roebuck & Co. Front-Loading Washer Prod. Liab. Litig.*, 867 F.3d 791, 792-93 (7th Cir. 2017) (approving attorney fees of $2.7 million where class was likely to receive no more than $900,000). Additionally, the customary fee arrangement with private litigants and their attorneys

in this Circuit is 33% to 40% of the total recovery.[3] Litigating this case to a favorable resolution supports approving the proposed compensation to Plaintiff's counsel.

Courts are encouraged to accept negotiated fee awards in class action settlements. *See*, *e.g.*, *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983) ("A request for attorneys' fees should not result in a second major litigation. Ideally, of course, litigants will settle the amount of the fee."). Plaintiff recognizes that the Court must determine the amounts that may be awarded in fees and costs. Unless otherwise directed by the Court, at a date set by the Court (prior to the proposed Final Approval hearing), proposed class counsel intends to submit a separate fee and costs petition for this Court's consideration. In the meantime, Plaintiff respectfully requests that this Court preliminarily approve Plaintiff's counsel's fee and costs request. *See*, *e.g.*, *Molinari*, 2021 WL 5832788, at *7 ("Finally, the Court preliminarily approves awarding up to 33 1/3 ($127,050) of the proposed Settlement Fund to compensate provisional Class Counsel for his reasonably incurred attorney's fees and costs … subject to a formal motion for attorney's fees and costs being submitted").

E. Plaintiff's proposed incentive award.

Because a named plaintiff is "an essential ingredient of any class action," an incentive award is appropriate if it is "necessary to induce an individual to participate in the suit." *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998); *see also*, *In re Synthroid Mkt. Litig.*, 264 F.3d 712, 722 (7th Cir. 2001) ("Incentive awards are justified when necessary to induce individuals to become named representatives."). In deciding the proper amount of an incentive award, relevant

[3] *See*, *e.g.*, *Gaskill v. Gordon*, 160 F.3d 361, 362-63 (7th Cir. 1998) (noting that typical contingency fees are between 33% and 40%, and affirming award of 38%); *Kirchoff v. Flynn*, 786 F.2d 320, 323 (7th Cir. 1986) (observing that "40% is the customary fee in tort litigation" and noting, with approval, contract providing for one-third contingent fee if litigation settled prior to trial).

factors include: the actions the plaintiff took to protect the interests of the class; the degree to which the class benefited from those actions; and the amount of time and effort the plaintiff expended in pursuing the litigation. *Cook*, 142 F.3d at 1016 (approving a $25,000 incentive award where the named plaintiff provided counsel with an "abundance of information" to support class claims).

Plaintiff has demonstrated that (a) she is a very knowledgeable class representative and (b) she fully participated in the prosecution of this matter, through her participation in reviewing and approving all of the pleadings filed, assisting with and responding to written discovery, and actively taking part in mediation that resulted in this settlement. Plaintiff's requested incentive award of $2,000 is abundantly reasonable given her assistance to this case and in comparison to other consumer-related class actions. As another court in this district held in approving a $5,000 incentive award in a consumer-related class action:

> This case did not proceed past the earliest phases of formal discovery before it was settled. Still, Kolinek attached his name to this litigation and participated in pre-filing investigation and informal and formal discovery. Although some objectors urge the Court to reject the proposed incentive award because it is dramatically more than the amount claiming class members will recover, a $5,000 reward is justified based on Kolinek's role working with class counsel, approving the settlement agreement and fee application, and volunteering to play an active role if the parties continued litigating through trial. It is also worth noting that courts regularly approve $5,000 incentive awards in common fund cases like this one.

Kolinek v. Walgreen Co., 311 F.R.D. 483, 503 (N.D. Ill. 2015).

Because of her meaningful assistance and willingness to attach her name to this case, Plaintiff respectfully requests that this Court preliminarily approve her incentive award in the amount to $2,000. *See*, *e.g.*, *Molinari*, 2021 WL 5832788, at *7 (preliminarily approving Plaintiff's incentive award subject to formal motion).

V. Conclusion

Plaintiff respectfully requests that this Court enter the accompanying order (attached to the Settlement Agreement as Ex. C and emailed to the Court in Word format) certifying the Settlement Class for settlement purposes; preliminarily approving the Settlement as fair, reasonable, and adequate; appointing Plaintiff as the class representative and Plaintiff's counsel as class counsel; preliminarily approving class counsel's fee and costs requests as fair and reasonable; preliminarily approving Plaintiff's service award as fair and reasonable; approving and directing notice to Settlement Class Members in the form provided in the parties' Settlement Agreement; and setting a final fairness hearing.

Respecfully submitted,

the law office of DONELON, P.C. www.donelonpc.com
KANSAS CITY ST. LOUIS

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Plaintiff's Local Counsel for Service under LR 83.15

Certificate of Service

I hereby certify that a copy of the above and foregoing was sent on May 16, 2023 via the Court's CM/ECF system to all counsel of record entered on this matter.

/s/ Daniel W. Craig
Attorney for Plaintiff

Exhibit A

the law office of **DONELON, P.C.** www.donelonpc.com

KANSAS CITY ST. LOUIS

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DONELON, P.C., has offices located in Kansas City and St. Louis, Missouri. The firm practices in federal courts throughout the United States. Donelon, P.C. was founded by attorney Brendan J. Donelon in February 2000. The practice focuses primarily on complex wage and hour class action claims and class action consumer fraud matters. It also has extensive experience in discrimination, harassment, and wrongful termination matters. Within recent years, DONELON, P.C. has resolved **in excess of $110 million for wage and hour class/collective cases**. DONELON, P.C. has litigated cases across the country including numerous federal courts of appeal and the U.S. Supreme Court. Attorneys Brendan J. Donelon and Daniel W. Craig have extensive experience with jury trials in both state and federal courts, including class action trials.

ATTORNEY BRENDAN J. DONELON: Mr. Donelon has been litigating wage and employment matters since 1995. He is licensed in the bars of the states of Missouri (admitted 9/29/95) and Kansas (admitted 4/26/96). He is also a member in good standing of the bars of the following federal courts: the Western District of Missouri (admitted 10/6/95); the Eastern District of Missouri (admitted 9/13/07); the District of Kansas (admitted 4/29/96); the Southern District of Illinois (admitted 7/14/98); the Northern District of Illinois (admitted 9/3/09); the Northern District of Florida (admitted 8/5/08); the Eastern District of Michigan (admitted 9/3/09), District of Colorado (admitted 02/25/14), Southern District of Indiana (admitted 10/2/2014), the Eastern and Western Districts of Arkansas (admitted 3/21/14), the Eastern District of Texas (admitted 7/28/2015); the Northern District of Texas (admitted 7/28/2015), the Western District of Oklahoma (admitted 8/18/15), the Central District of Illinois (01/20/17), the Northern District of Ohio (admitted 06/23/21), the United States Court of Appeals for the Eighth Circuit (admitted 10/9/03); and the United States Court of Appeals for the Tenth Circuit (admitted 2/23/07); the United States Court of Appeals for the Seventh Circuit (admitted 12/23/10); the United States Court of Appeals for the Second Circuit (admitted 6/12/12); the United States Court of Appeals for the First Circuit (admitted 7/13/12); and the United States Supreme Court (admitted 6/25/12). Mr. Donelon started his own law practice at the young age of 29. He has tried numerous successful jury verdicts in both state and federal courts. Mr. Donelon also has extensive practice before state and federal appellate courts including briefing matters before the U.S. Supreme Court. He is considered by his peers to be a preeminent practitioner in the litigation of complex wage and hour matters, and is an active member of the National Employment Lawyers Association (NELA). He has chaired the Labor and Employment law committee for the Kansas City Metropolitan Bar Association and also chaired the task force committee for the Kansas City chapter

of NELA reviewing and analyzing revisions to the Missouri Commission on Human Rights policies and procedures and its effects on claimant's rights. Mr. Donelon has been recognized as a "Super Lawyer" for labor and employment law in Missouri and Kansas – a research-driven, peer influenced, rating service of outstanding attorneys, from more than 70 practice areas, who have attained a high-degree of peer recognition and professional achievement. The selection process includes independent research, peer nominations and peer evaluations, assuring a credible and annual list of the top 5% of attorneys. He has made numerous presentations before local and national organizations regarding wage and employment law.

His educational background is as follows:

University of Missouri, Kansas City, MO.
Degree: Juris Doctorate.
Graduation: May 6, 1995.

Truman State University, Kirksville, MO.
Degree: B.S. Economics.
Graduation: May 9, 1992.

Mr. Donelon has litigated a large number of collective class action matters under the Fair Labor Standards Act (FLSA) and related class action claims under Fed.R.Civ.P. 23. This includes being designated as lead class counsel in over 100 cases. Some noted examples:

- Drake, et al. v. Steak N Shake, Inc., United States District Court for Eastern District of Missouri, 4:14-cv-1535. Initiated in 2014, Donelon, P.C. brought a misclassification case on behalf of Missouri restaurant Managers for misclassification and denial of overtime pay. On Feb. 27, 2019, the jury returned a verdict on the class member's behalf rejecting defendant's administrative, executive, and mixed overtime exemption affirmative defenses. Final judgment entered by court on the verdict was $7.7 million. This case along with an accompanying FLSA collective action case were settled for $8.5 million.

- Hunsley, et al. v. Univ. of Mo. Board of Curators: Circuit Court of Boone County, MO, 16BA-CV01520. Filed in 2016, Donelon, P.C. brought class action claims for breach of contract and unjust enrichment against the Univ. of MO. Health Care system for failing to pay overtime to health care providers due to defendant automatically deducting 30 minutes for meal breaks the class members were not able to take. The Court approve a settlement of $3.6 million for over 5,000 class members on April 25, 2018.

- In re: Bank of America Wage and Hour Employment Practices Litigation: United States District Court for the District of Kansas, case no.: 10-MD-2138. Initiated in 2009, and one of the largest overtime collective actions in the country, Mr. Donelon was appointed as lead counsel over a multi-district litigation that consolidated 27 class action claims against Bank of America regarding failure to pay a class of over 180,000 employees proper overtime at their retail banking and call center locations. Court approved $73 million settlement on December 18, 2014.

- Citizens Financial Group, Inc., et al. Litigation. Six class/collective actions filed in federal courts in the N.D. Illinois, W.D. Pennsylvania, E.D. Pennsylvania, District of Massachusetts, E.D. New York, and Court of Common Pleas for Philadelphia, Pennsylvania. All six cases related to Citizens allegedly misclassifying assistant branch managers and not paying overtime. Also, some cases involved Citizens not paying its hourly employees overtime pay for work performed off-the-clock. Three conditional certifications were granted under the FLSA, and three Rule 23 class certifications were granted as well. Litigation involved appeals brought before the Seventh, Second, First, and Third Circuit court of appeals as well as the U.S. Supreme Court in one matter. One case was tried to jury over a three-week period. While the plaintiffs lost the trial, the claims in that matter, along with the other pending five cases, were resolved together for $11.5 million. Appointed lead counsel in all matters.

- Waters, et al. v. Kryger Glass Company. United States District Court for the Western District of Missouri, case no.: 09-CV-1003. Filed: November 30, 2009. Class action claim under FLSA for

time shaving related to employees working at eight facilities. Granted lead class counsel status. Confidential class settlement reached.

- McFadden, et al. v. Corrections Corporation of America United States District Court for the District of Kansas, case no.: 09-2273-EFM. Filed: May 21, 2009. Class action claim on behalf of all assistant shift supervisors for misclassification under the FLSA. Case covers employees at over 60 facilities in over 30 states. Granted lead class counsel status. Confidential settlement reached.

- Shockey, et al. v. Huhtamaki Consumer Packaging, Inc. et al. United States District Court for the District of Kansas, case no.: 09-CV-2260. Filed: May 15, 2009. Class action claim under the FLSA on behalf of all hourly plant employees at ten facilities for off the clock work and time clock rounding. Granted class counsel status. Confidential class settlement reached.

- Busler, et al. v. Enersys Energy Products, Inc. et al. $3.25 million settlement approved on 4-7-2010. United States District Court for the Western District of Missouri, case no.: 09-CV-0159. Filed on: February 27, 2009. Class action claim under the FLSA on behalf of all plant employees at four locations for failure to properly pay for donning and doffing. Granted lead class counsel status.

- Loyd, et al. v. Ace Logistics, L.L.C. et al. United States District Court, Western District of Missouri, case no.: 08-0188. Filed: March 13, 2008. Class action claim under the FLSA on behalf of all delivery drivers who were not paid any overtime compensation. Granted lead class counsel status. Default judgment entered for $1.8 million.

- Mayes, et al. v. The Geo Group, Inc. Settlement approved 10/31/2009. Filed on: August 6, 2008. United States District Court for the Northern District of Florida, case no.: 08-CV-0248. Class action claim under the FLSA on behalf of in excess of 11,000 security guards at private prison for off the clock work and time clock rounding. Granted lead class counsel status.

- Chankin, et al. v. Tihen Communications, Inc. Confidential Settlement Approved 09/11/2009. United States District Court, Eastern District of Missouri, case no.: 08-0196. Filed: February 7, 2008. Class action case under the FLSA on behalf of cable technicians that were inappropriately being treated and independent contractors and not paid overtime. Granted lead class counsel status.

- Thomas Payson, et al. v. Capital One Home Loans. Confidential Settlement Approved 03/26/09. United States District Court, District of Kansas, case no.: 07-2282. Class action claim under FLSA, and related Rule 23 class claims under Kansas law, on behalf of loan originators nationwide for failing to properly pay overtime on commission income. Filed on: June 29, 2007. Granted lead class counsel status. Settlement reached for $9.5 million.

- Barnwell, et al. v. Corrections Corporation of America. $7 million Settlement approved 02/12/2009. United States District Court for the District of Kansas, case no.: 08-CV-2151. Filed: April 3, 2008. Class action claim under the FLSA on behalf of in excess of 16,000 security guards at private prison for off the clock work and time clock rounding. Granted lead class counsel status.

- Smith, et al. v. Mill-Tel, Inc. Confidential Settlement Approved 08/28/2008. United States District Court, District of Kansas, case no.: 08-2016. Filed: January 8, 2008. Class action case under the FLSA on behalf of cable technicians that were inappropriately being treated and independent contractors and not paid overtime. Granted lead class counsel status. Confidential class settlement reached.

- Michael Hamilton, et al. v. ATX Services, Inc. Confidential Settlement Approved 05/06/2008. United States District Court, Western District of Missouri, case no.: 08-0030. Filed: January 11, 2008. Class action case under the FLSA on behalf of cable technicians that were inappropriately being treated and independent contractors and not paid overtime. Granted lead class counsel status. Confidential class settlement reached.

- Mische, et al. v. North American Savings Bank, F.S.B. Confidential Settlement approved May 18, 2009. United States District Court for the District of Kansas, case no.: 08-CV-2535-CM Filed on: October 27, 2008. Class action claim under FLSA on behalf of loan originators nationwide for failing to properly pay overtime on commission income. Granted lead class counsel status. Confidential class settlement reached.

- Most, et al. v. General Nutrition Centers, Inc. Confidential Settlement approved July 23, 2007. United States District Court for the District of Kansas, case no.: 06-CV-2330. Filed on: August 9, 2006. Class action claim brought under the FLSA on behalf of over 6000 store managers for failing to properly calculate and pay overtime. Granted lead class counsel status. Confidential class settlement reached.

Mr. Donelon has spoken on numerous occasions regarding employment law and wage and hour issues. Some examples include:

National Employment Lawyers Association – Numerous presentations at national convention on FLSA claims, state wage claims, and litigation and trial strategies.

American Civil Liberties Union of Missouri – Legal advisory committee member since 2017, chair of the legal advisory committee since 2018, board member since 2018, current board president.

National Multiple Scleroses Society - Speak on numerous occasions at conferences for newly diagnosed persons regarding their employment rights under the FMLA and the ADA.

American Bar Association - March 2002; Continuing Legal Education entitled Equal Employment Opportunity Basic Law and Procedures. Topic: Starting up a plaintiff's practice.

Sterling Educational Services - March 2005; Continuing Legal Education entitled Basics of Missouri Workers Compensation Law. Topic: Retaliation for Exercising Workers Compensation Rights.

Missouri Bar Association - Spring 2006 Meeting; Topic: member of panel discussing recent jury trial experiences in Missouri State courts under the Missouri Human Rights Act.

Kansas City Metropolitan Bar Association - June 2007; Processing charges of discrimination before governmental agencies.

University of Missouri Kansas City School of Law - November 2007, Continuing Legal Education on Employment Law. Spoke on effective techniques in obtaining punitive damages in employment cases and pursuing collective action claims under the FLSA.

Kansas City Metropolitan Bar Association - February 2008, Continuing Legal Education on Mendelsohn & the Supremes. Narrated program on recent U.S. Supreme Court case and argument regarding *Mendeloshn v. Sprint* employment case.

Missouri Bar Association - June 2008, Continuing Legal Education, speaker on topic of Plaintiff's Perspective: How to hit the Pot of Gold Building Case Value, Effective Discovery, State Court Summary Judgment, and Jury Trials.

Kansas City Metropolitan Bar Association - June 2009, Continuing Legal Education at Annual Labor & Employment Law Seminar. Topic: *Legal Pitfalls and Opportunities: Class and Collective Actions*.

Missouri Bar Association – 2009 Annual Labor & Employment Law Symposium. November 2009. Topic: Anatomy of a FLSA Enforcement Action, Plaintiff's perspective.

Kansas City Metropolitan Bar Association – Bench, Bar & Boardroom conference. May 2010. Topic: Emerging trends in Employment Law for Corporate Counsel.

Plaintiffs Employment Lawyers Association – Golden, Colorado. August 2016. Topics: Trying a collective class action case and hurdles in forced arbitration.

National Employer Lawyers Association – Washington, D.C. March 2017 National wage and hour conference. Topic: moderating panel on effective way to try a class/collective action case.

ATTORNEY DANIEL W. CRAIG: Mr. Craig heads up the St. Louis office and is a 1995 graduate of the University of Missouri – Kansas City School of Law. Dan has over thirteen years of significant experience in state and federal courts representing plaintiffs in employment and personal injury matters. This includes many trial experiences. He is licensed in the states of Missouri and Illinois, the Federal District Court of Missouri for the Western and Eastern Districts, the Kansas Federal District Court, the Northern District of Illinois, and the United States Court of Appeals for the Eighth Circuit. Dan has briefed and argued before the Supreme Court of Missouri, Missouri Court of Appeals (Western, Eastern and Southern Districts), and before the Eighth Circuit Court of Appeals.

Mr. Craig has had several experiences litigating wage and hour class action claims. This includes being designated as lead class in numerous lawsuits. His experience in this area is as follows:

- Hunsley, et al. v. Univ. of Mo. Board of Curators: Circuit Court of Boone County, MO, 16BA-CV01520. Filed in 2016, Donelon, P.C. brought class action claims for breach of contract and unjust enrichment against the Univ. of MO. Health Care system for failing to pay overtime to health care providers due to defendant automatically deducting 30 minutes for meal breaks the class members were not able to take. The Court approve a settlement of $3,600,000.00 for over 5,000 class members on April 25, 2018.

- In re: Bank of America Wage and Hour Employment Practices Litigation: United States District Court for the District of Kansas, case no.: 10-MD-2138. Initiated in 2010, Donelon appointed as lead counsel over a multi-district litigation that consolidated over 30 class action claims against Bank of America regarding failure to pay a class of over 180,000 hourly employees proper overtime at their retail banking and call center locations.

- Bell, et al. v. Citizens Financial Group, Inc., et al. United States District Court for the W.D. of Pennsylvania, case no.: 10-CV-0320. Filed: March, 2010. Class action claim under FLSA and related state law claims for misclassification of assistant branch managers working at over 1100 branches.

- Martin, et al. v. Citizens Financial Group, Inc., et al. United States District Court for the E.D. of Pennsylvania, case no.: 10-CV-0260. Filed: January 21, 2010. Class action claim under FLSA and related state law claims for nonexempt bank employees working at over 1100 branches.

- Waters, et al. v. Kryger Glass Company. United States District Court for the Western District of Missouri, case no.: 09-CV-1003. Filed: November 30, 2009. Class action claim under FLSA for time shaving related to employees working at eight facilities.

- Gordillo, et al. v. Bank of America, N.A. United States District Court for the Eastern District of California, case no.: 09-CV-1954. Filed: November 23, 2009. Class action claim brought under California wage and hour laws on behalf of all call center employees for failing to pay overtime for pre and post shift work.

- Schreiber, et al. v. Bank of America, N.A. United States District Court for the District of Kansas, case no.: 09-CV-1336. Filed: October 30, 2009. Class action claim brought under FLSA on behalf of all call center employees nationwide for failing to pay overtime for pre and post shift work.

- West, et al. v. Citywide Mortgage Associates, Inc. United States District Court for the District of Kansas, case no.: 09-CV-2542. Filed: October 20, 2009. Class action claim under FLSA on behalf of loan originators nationwide for failing to properly pay overtime on commission income.

- McKinzie, Jr. et al. v. Westlake "Ace" Hardware, Inc. United States District Court, Western District of Missouri, case no.: 09-0796. Filed: September 28, 2009. Class action claim on behalf of floor supervisors for misclassification as salary exempt under the FLSA. Case involves employees in five states.

- Ross, et al. v. RBS Citizens, N.A. (d/b/a Charter One), et al. United States District Court for the Northern District of Illinois, case no.: 09-CV-5695. Filed: September 14, 2009. Class action claim under the FLSA and related state law claims on behalf of all nonexempt bank branch employees in four states covering over 300 locations. Also, a misclassification claim for assistant branch managers for the same area. Granted lead class counsel status for FLSA class claims, pending for Rule 23 claims.

- Carson, et al. v. Mortgage Lenders of America, L.L.C. United States District Court for the District of Kansas, case no.: 09-CV-2437-CM. Filed: August 20, 2009. Class action claim under FLSA on behalf of loan originators nationwide for failing to properly pay overtime on commission income.

- Shockey, et al. v. Huhtamaki Consumer Packaging, Inc. et al. United States District Court for the District of Kansas, case no.: 09-CV-2260. Filed: May 15, 2009. Class action claim under the FLSA on behalf of all hourly plant employees at ten facilities for off the clock work and time clock rounding.

- Brawner, et al. v. Bank of America, N.A. United States District Court for the District of Kansas, case no.: 09-CV-2073. Filed on: February 13, 2009. Class action claim under FLSA and related state laws on behalf of nonexempt employees working at over 6000 banking centers nationwide for off the clock work and time shaving. Seeking lead class counsel status.

- Creten-Miller, et al. v. Westlake "Ace" Hardware, Inc. United States District Court for the District of Kansas, case no.: 08-2351. Filed: July 31, 2008. Class action claim on behalf of front end supervisors for misclassification as salary exempt under the FLSA. Case involves employees in five states.

- Humphrey, et al. v. Bank Mortgage Solutions, L.L.C. & Bank VI. Settlement approved 02/18/2010. Filed: April 28, 2009. United States District Court for the District of Kansas, case no.: 09-CV-2224. Class action claim under FLSA on behalf of loan originators nationwide for failing to properly pay overtime on commission income.

- Mische, et al. v. North American Savings Bank, F.S.B. Confidential Settlement approved May 18, 2009. United States District Court for the District of Kansas, case no.: 08-CV-2535-CM Filed on: October 27, 2008. Class action claim under FLSA on behalf of loan originators nationwide for failing to properly pay overtime on commission income.

Mr. Craig also has experience in litigating other complex employment and personal injury matters which include:

- Levings, et al. v. Rent-A-Center, Inc., 4:00-CV-00596-ODS. Class action lawsuit for employment discrimination. Settled for an amount in excess of $13,000,000.00.
- Allen et al. v. Thorn Americas, Inc., et al., 4:97-CV-01159-SOW. Class action lawsuit for employment discrimination. Settled for $6,500,000.00.
- Wooten, et al., v. Dillards, Inc., 4:99-CV-00990-ODS. Class action lawsuit for employment discrimination. Settled for $5,600,000.00.
- Ross v. KCP&L, 4:98-CV-00674-ODS. One of approximately 40 individual employment discrimination cases brought against the defendant. Jury verdict obtained in the amount of $1,500,000.00, and settled prior to appeal. Remaining cases settled for confidential amount.
- Barnes, et al. v. Gateway, Inc., et al., 4:99-CV-00586-GAF. Multiple plaintiff employment discrimination lawsuit. Settled for confidential amount.
- Thorne v. Sprint, PCS. 4:00-CV-00913-HFS**.** Sexual harassment employment claim. Jury verdict obtained in amount of $1,200,000.00. Settled prior to appeal.
- Boshears v. Saint-Gobain Calmar, Inc., 04CV220714**.** Two clients received moderate to severe burns as a result of flash fire that occurred while removing gas pipes. Negligence claim was brought against property owner. Jury verdict obtained in the amount of $3,060,000.00. Verdict affirmed on appeal.
- Smith v. City of KCMO, et al., 05CV23300. Intersection accident which led to death of mother and serious injuries to daughter. Suit was brought against other driver and against KCMO for failing to maintain traffic signage. Total settlement obtained in the amount of $1,500,000.00.
- Haynes v. Edgerson Ins. Agency, 04CV214433**.** Negligent failure to procure insurance case. Jury verdict obtained in the amount of $4,297,500.00. Parties entered into settlement agreement.
- Norris v. Mo. West Conf., et al., 31102CC4167**.** Intentional failure to supervise clergy case. Jury verdict obtained in the amount of $6,000,000.00. Parties settled prior to appeal.

Exhibit B

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

JENA HECKER, *et al.*	)	
	)	
Plaintiffs,	)	
	)	Case no.: 1:21-cv-0349
vs.	)	
	)	
EASY HEALTHCARE CORPORATION	)	
	)	
Defendant.	)	

STIPULATION OF SETTLEMENT
AGREEMENT AND RELEASE

This Stipulation of Settlement Agreement and Release (this "Settlement Agreement") is entered into between Jena Hecker Plaintiff (and proposed "Class Representative") of the "Premom Consumer Class" (as defined in Sections 1.6 and 1.22, below) (hereafter the "Plaintiff," "Class Representative" or "Hecker"), represented by her attorneys Brendan J. Donelon and Daniel W. Craig of Donelon, P.C., and Defendant Easy Healthcare Corporation ("EHC"), represented by their attorneys Brenda R. Sharton, Benjamin M. Sadun and Alison S. Cooney of Dechert, LLP, in the matter entitled *Jena Hecker, et al. v. Easy Healthcare Corporation*, filed in United States District Court for the Northern Division of Illinois as Case No. 1:21-cv-0349 ("the Action"). Plaintiff and EHC are collectively referred to as "the Parties."

WHEREAS, on August 6, 2020, the International Digital Accountability Council ("IDAC") publicly alleged, through published letters to the Federal Trade Commission ("FTC") and Attorney General of Illinois, that Easy Healthcare, through its Premom App, "may [have] engaged in deceptive practices," including having "two separate privacy policies that are not consistent with each other," "secretly sharing geolocation data and device identifiers with third-parties, including untrustworthy companies, without disclosure, contradicting their own privacy policies," "engag[ing] in ID bridging," and falsely "representati[ng] to users that collecting lists of installed apps for functionality purposes … is necessary[.]"

WHEREAS, on August 20, 2020, the Washington Post published an article that repeated the allegations of the IDAC and asserted that "by explicitly calling the information they share 'nonidentifiable,' the company [Premom] is misleading users [in its privacy policy] about how the kind of data they're giving away [that] can be used to track them across the Web and build valuable profiles to target them with ads."

WHEREAS, on August 28, 2020, Senator Amy Klobuchar and Senator Jerry Moran publicly shared a letter they had sent the FTC urging it to take action to address the data collection and sharing practices of the Premom App.

WHEREAS, on September 2, 2020, the Connecticut Attorney General announced that it had sent, along with the District of Columbia Attorney General, a letter to Easy Healthcare questioning the Premom App's data sharing and privacy practices.

WHEREAS, on January 21, 2021, Plaintiff filed a Complaint against EHC, on behalf of herself and all others similarly situated, for damages and other relief, including equitable relief, for breach of contract, fraud, and violation of the Illinois Consumer Fraud & Deceptive Business Practices Act, 815 ILCS § 505/1 *et seq.* ("ICFA"), regarding EHC allegedly sharing personal identifying information and data regarding users of its Premom App in violation of its Privacy Policies. Specifically, as outlined in Paragraph 1 of Plaintiff's Complaint, Plaintiff brought a class action pursuant to Federal Rules of Civil Procedure 23 "on behalf of herself and all other similarly situated persons who downloaded EHC's 'Premom' application to their smart phones, tablets, and laptop computers. . . that utilize Google's Android operating software system from the date of Premom's inception in 2017 to the present."

WHEREAS, on January 25, 2021, Plaintiff filed an Amended Complaint against EHC, on behalf of herself and all others similarly situated, for damages and other relief, including equitable relief, for breach of contract, fraud, and violation of the Illinois Consumer Fraud & Deceptive Business Practices Act, 815 ILCS § 505/1 *et seq.* ("ICFA"), regarding EHC allegedly sharing personal identifying information and data regarding users of its Premom App in violation of its Privacy Policies. Specifically, as outlined in Paragraph 1 of Plaintiff's Amended

Complaint, Plaintiff brought a class action pursuant to Federal Rules of Civil Procedure 23 "on behalf of herself and all other similarly situated persons who downloaded EHC's 'Premom' application to their smart phones, tablets, and laptop computers. . . that utilize Google's Android operating software system from the date of Premom's inception in 2017 to the present."

WHEREAS, Plaintiff filed a Second Amended Complaint ("SAC") on May 5, 2021 against EHC, on behalf of herself and all others similarly situated, for damages and other relief, including equitable relief, for breach of contract, fraud, and violation of ICFA, regarding EHC allegedly sharing personal identifying information and data regarding users of its "Premom" application ("app") in violation of its Privacy Policies. Specifically, as outlined in Paragraph 1 of Plaintiff's SAC, Plaintiff brought a class action pursuant to Federal Rules of Civil Procedure 23 "on behalf of herself and all other similarly situated persons who downloaded EHC's 'Premom' application to their smart phones, tablets (including but not limited to iPads), and laptop computers … that utilize Google's Android operating system from the date of Premom's inception in 2017 to the present."

WHEREAS, as part of this Settlement Agreement, the parties have agreed that Plaintiff shall file a Third Amended Complaint ("TAC"). The TAC shall be identical to the SAC (asserting the same claims under the same theories of law for the same time period and repeating the same factual allegations) except the proposed Rule 23 putative class shall include all persons in the United States who registered to use EHC's Premom app onto their Android or iOS smart phones, tablets, or laptop computers;

WHEREAS, EHC has at all times denied liability for all claims and issues arising from or in any way related to the Action, and in particular denies that it breached any agreement, committed fraud, or violated the ICFA in any way regarding the Plaintiff or the proposed Rule 23 Premom Consumer Class, denies that the proposed putative class meets the manageability requirement of Rule 23, and maintains that it has at all times complied with the obligations of Premom's Privacy Policies; and

WHEREAS, the Plaintiff and EHC have conducted substantial discovery over more than a year, including the exchange of factual disclosures, records pursuant to requests for production, and responses pursuant to requests for admission and interrogatories, during which EHC has disclosed, among other things, all third party services providers the Premom app has used, and engaged experts to review data and prepare reports, and such discovery has enabled each party to understand and assess the detail and substance of their respective claims and defenses;

WHEREAS, the Parties are desirous of achieving a resolution of all claims and issues existing between the Parties;

WHEREAS, on February 7, 2023, after a full day mediation session with a highly skilled mediator, the Parties reached agreement on the material terms of a settlement resolving the Plaintiff's and proposed Rule 23 Premom Consumer Class's claims, which are now being memorialized in this Settlement Agreement;

WHEREAS, Class Counsel has concluded, after due investigation and after carefully considering the relevant circumstances, including, without limtiation, the claims, the legal and factual defenses thereto, and the applicable law, that (i) it is in the best interests of the Premom Consumer Class to enter into this Agreement in order to avoid the uncetainties of litigation and to assure that the benefits reflected herein are obtained for the Premom Consumer Class; and (ii) the Settlement set forth herin is fair, reasonable, and adequate and in the best interest of the Premom Consumer Class.

NOW, THEREFORE, in consideration of the mutual promises and agreements hereinafter set forth, receipt of which is acknowledged, it is hereby stipulated and agreed for purposes of settlement only by and between the Parties that:

I. DEFINITIONS

The terms defined below shall have the meanings set forth in this Section wherever used in this Agreement and its exhibits, including the Notice (as defined in Section 1.17, below).

1.1 "Agreement" means this Stipulation of Settlement Agreement and Release and the terms outlined therein.

1.2 "Civil Action" means the above-captioned action.

1.3 "Claim and Release Form" means the form agreed upon by the Parties and approved by the Court, that are to be completed by the Premom Consumer Class member—along with supporting documentation described in the Notice—in order to make a claim under this Settlement. Such form accompanying the Notice (as defined in Section 1.15, below) is attached hereto as Exhibit B.

1.4 "Claim Deadline" means the date that occurs sixty (60) days after the date Notice is mailed to the Premom Consumer Class, which is the date by which Premom Consumer Class members must return a completed Claim and Release Form. If this date is on a Saturday, Sunday, or federally recognized holiday, the Claim Deadline shall be the following business day.

1.5 "Class Counsel" means attorney Brendan J. Donelon and Daniel W. Craig of DONELON, P.C.

1.6 "Class Representative" means Jena Hecker.

1.7 "Court" means the United States Northern District Court for Illinois .

1.8 "Covered Period" means the time frames for compensation set forth under the definitions for the Premom Consumer Class Members.

1.9 "Defense Counsel" means Brenda R. Sharton, Benjamin M. Sadun and Alison S. Cooney of DECHERT, LLP.

1.10 "Fairness Hearing" means the hearing set by the Court in the Preliminary Approval Order whereby the members of the Premom Consumer Class are permitted to present any objections to this Settlement Agreement.

1.11 "Final Approval Date" means the date the Court enters its Final Approval Order (as defined in Section 1.12, below).

1.12 "Final Approval Order" means any order issued by the Court after the Fairness Hearing which grants final approval of the Settlement, authorizes the distribution of payments to

Class Counsel, Plaintiff, Participating Class Members (as defined in Section 1.17, below), and the Third Party Administrator (as defined in Section 1.26, below), under the terms forth herein, and dismisses with prejudice the Premom Consumer Class members' Released Claims against the Released Parties.

1.13 "Gross Settlement Fund" means the total amount of settlement money that can possibly be paid by EHC under this Settlement Agreement. The amount of the Gross Settlement Fund is $750,000.00.

1.14 "Net Settlement Fund" is the amount that represents the Gross Settlement Fund after deduction of: (a) Court approved attorneys' fees, expenses, and costs as set forth in Section 4.1; (b) payment for the Third Party Administrator's costs and expenses; and (c) the service award to Plaintiff as set forth in Section 5.2. Any and all unused and/or unallocated monies in Net Settlement Fund shall revert back to EHC.

1.15 "Notice" means the notice sent to the Premom Consumer Class members, and the related Claim and Release Form, all attached hereto as Exhibits A and B, which have been approved by the Parties and are subject to the approval of the Court.

1.16 "Parties" means the Plaintiff, Premom Consumer Class members and EHC.

1.17 "Participating Class Member" means a Premom Consumer Class member who returns a Claim and Release Form—along with all required documentation set forth in the Notice—by the Claim Deadline.

1.18 "Payment Deadline" means the date that falls ninety (90) days after the Court enters its Final Approval Order.

1.19 "Plan of Allocation" is the method by which the amount owed under this Settlement is determined for each Participating Class Member—the description of which has been set forth in Section 5.1.

1.20 "Preliminary Approval Date" means the date the Court enters the Preliminary Approval Order (as defined in Section 1.23, below).

1.21 "Preliminary Approval Order" means any order issued by the Court granting conditional class certification under Rule 23 on behalf of the Premom Consumer Class set forth in the Third Amended Complaint; and which grants preliminary approval of the Settlement; and which authorizes the distribution of the Notice attached hereto as Exhibit A to the Premom Consumer Class members; and which preliminary approves the allocation of the Gross Settlement Fund as set forth herein; and which sets a date for a final Fairness Hearing before the Court (the Parties' courtesy copy to be provided to the Court is attached hereto as Exhibit C).

1.22 "Premom Consumer Class" or "the Class" is defined as persons located with the United States who registered to use EHC's Premom application onto their Android or iOS smart phones, tablets, or laptop computers from October 2017 through the present.

1.23 "Released Claims" means all actions, claims, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, complaints, charges, commissions, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, liabilities, obligations, complaints, rights, and demands whatsoever, at law, admiralty or in equity, whether known or unknown, suspected or unsuspected, against EHC or any Released Party, under federal law or the law of any state (from any of the 50 states and United States territories), including those relating in any way to (i) EHC's collection, use, storage, transmission, disclosure, or sharing of any data from, regarding, or belonging to users of the Premom App; and (ii) any agreements, contracts, disclosures, non-disclosures, obligations, acts, or omissions regarding the collection, use, storage, transmission, disclosure, or sharing of such data to the maximum extent allowed by law. Such data includes, but is not limited to, user inputs, metadata, device identifiers, app events and other analytics data, location data, health data, personally identifying information, and biometric data. Such claims include, but are not limited to, all claims that have been, are, or could have been alleged in this Action, including EHC's alleged wrongful sharing to third parties. For the avoidance of doubt, this includes, but is not limited to, all claims arising out of or relating to any of EHC's practices, acts, or omissions

alleged, described, or implied by the public news articles described in Exhibit D to this Agreement.

1.24 "Released Parties" means EHC Easy Healthcare Corporation and their predecessors, successors, and present, future and former affiliates, parents, subsidiaries, divisions, insurers, reinsurers, officers, directors, board members, principals, attorneys, agents, representatives, employees, and assigns, including, without limitation, any investors, trusts, or other similar or affiliated entities and all persons acting by, through, under, or in concert with any of them, including any party that was or could have been named as a EHC in the Action.

1.25 "Settlement Agreement," the "Agreement," or the "Settlement" means this Stipulation of Settlement Agreement and Release and the terms outlined therein.

1.26 "Third Party Administrator" ("TPA") means Kurtzman Carson Consultants LLC, who was selected by the Parties to be responsible for mailing the Notices, collecting the Claim and Release Forms, establishing a trust account for the purposes of collecting funds from EHC to effectuate the terms of this Settlement, making payments to the Participating Class Members under the terms of this Agreement, and making payments to Class Counsel under the terms of this Agreement.

II. RECITALS

2.1 EHC is an Illinois corporation registered and in good standing to do business in the state of Illinois. Its principal place of busines is located at 360 Shore Drive, #B, Burr Ridge, Cook County, Illinois 60527. It provides home and workplace healthcare products selling various devices such as thermometers, oximeters, pregnancy tests, drug tests, *etc.* As part of its business operations, EHC created and offers an application ("App") for iOS and Android smart phones and tablets called "Premom" on the internet and in the Apple and Google Pay App stores..

2.2 Premom and Easy@Home are the two primary brands owned by EHC. Easy@Home is a registered trademark of products including home-use tests and medical devices such as ovulation tests, pregnancy tests, thermometers, oximeters, drug tests etc. According to

EHC, the Premom App was created to help women get pregnant quickly and naturally. Since it was launched, the Premom App was recognized as "First" of several innovations. It is the world's first ovulation App to incorporate biotechnology and image recognition. It is also the first App to offer an intelligent reader of home ovulation tests and the first App to offer a data-based virtual consultation program. With this program, fertility consultants can remotely analyze the home testing data, charts, and other symptoms to provide a more relevant and effective solution. Previously such data-powered consulting was only available from in-office visits and testing. The Premom App has been ranked as the #1 Ovulation Test Reader at both Apple App store and Google Play store.

2.3 Class Counsel conducted a thorough investigation into the facts of the Civil Action, including the discovery of documents concerning operating agreements, privacy policies, EHC's financial status and data on consumer usage. Based on their investigation and evaluation, the Plaintiff and Class Counsel are of the opinion that the terms set forth in this Settlement Agreement are fair, reasonable, and adequate and in the best interests of the Premom Consumer Class in light of all known facts and circumstances, including the risk presented by the defenses asserted by EHC, the risk of not obtaining certification under Rule 23, the risks of decertification, the risk of summary judgment, the financial ability of EHC, and the delays associated with the litigation, trial and an appeal process, and ultimately the risks of collecting any awards against EHC. EHC is aware of the opposing risks of each of these situations, and the potential exposure it faces if unsuccessful in defeating class certification, and ultimately losing at trial and on appeal.

2.4 It is the desire of the Parties to fully, finally, and forever settle, compromise, and discharge all disputes and claims arising from or related to the Civil Action and all similar facts, allegations, transactions, or occurrences.

2.5 It is the intention of the Parties that this Agreement shall constitute a full and complete settlement and release by the Plaintiff and Premom Consumer Class members of the Civil Action and the Released Claims against the Released Parties.

2.6 EHC denies any liability or wrongdoing of any kind associated with the claims alleged in the Civil Action.

2.7 This Agreement is a compromise and shall not be construed as an admission of liability at any time or for any purpose, under any circumstances, by the Parties or the Released Parties. The Parties further acknowledge and agree that neither this Agreement nor the Settlement shall be used to suggest an admission of liability in any dispute that any of the Parties may have now or in the future with respect to any person or entity. Neither this Agreement, anything in it, nor any part of the negotiations that occurred in connection with the creation of this Settlement, nor any act performed or document executed pursuant to or in furtherance of the Settlement Agreement or the settlement, hall constitute evidence with respect to any issue or dispute in any lawsuit, legal proceeding, or administrative proceeding, including but not limited to the certifiability of any putative class action, except for legal proceedings concerning the enforcement or interpretation of this Agreement.

III. OBTAINING LEAVE TO AMEND AND CONDITIONAL CLASS CERTIFICATION

3.1 As a material term of this Settlement, within five (5) days of the Parties executing this Agreement, the Plaintiff shall file—unopposed by EHC—a motion for leave to file a Third Amended Complaint.

3.2 This Third Amended Complaint shall be identical to the SAC (asserting the same claims under the same theories of law for the same time period, repeating the same factual allegations) except that the proposed Rule 23 putative class shall include all persons in the United States who registered to use EHC's Premom app onto their Android or iOS smart phones, tablets, and laptop computers. The Court granting such leave to file this Third Amended Complaint is a material term of this Settlement, and the Parties' failure to remedy any issues raised by the Court in its denial to grant such leave shall void this Agreement in its entirety among the Parties.

3.3 As a material term of this Settlement, when filing a motion seeking an order granting preliminary approval of this Settlement, Plaintiff shall also move to have the Court grant conditional class certification under Rule 23 on behalf of the Premom Consumer Class—unopposed by EHC after review and approval of the Motion—in order to effectuate the terms and conditions of this Agreement. This Motion will request that Plaintiff be Class Representative and Donelon, P.C. to be Class Counsel. The Court's granting of such conditional certification is a material term of this Settlement. If the Court denies class certification, or any appellate court reverses class certification, and the Parties fail to remedy any issues raised by such court so as to make the class certifiable, this Agreement shall be void in its entirety among the Parties. If this Agreement becomes null or void under any circumstances, the conditional class certification obtained by the Plaintiff for the purposes of effectuating the terms of this Settlement shall also become null and void.

IV. ATTORNEYS' FEES, LITIGATION COSTS, AND SETTLEMENT ADMINISTRATION COSTS

4.1 Subject to Court approval of this Settlement Agreement, in recognition of the considerable time Class Counsel spent litigating the Action over nearly two years, EHC will pay Class Counsel $150,000.00 for attorneys' fees (representing 20% of the Gross Settlement Fund) and $2,685.00 for expenses and costs incurred by Class Counsel in the prosecution of the Plaintiff's and Premom Consumer Class members' claims in this Civil Action. In the Plaintiff's motion for approval of the attorneys' fees, costs, and expenses regarding this Settlement, Plaintiff will move the Court to require payment of the fees, expenses, and costs to Class Counsel within twenty-one (21) days of the later of: (a) the Final Approval Date, or (b) receipt by the TPA of taxpayer identification numbers via executed W-9 forms from Class Counsel. EHC will not oppose the Plaintiff's motion for approval of attorneys' fees, expenses and costs as represented herein. The TPA shall issue an IRS Form 1099 for the payments to Class Counsel set forth in this paragraph in the normal course of business, and any and all taxes relating to the payments described in this paragraph shall be the sole responsibility of Class Counsel. Class

Counsel agrees to indemnify and hold harmless EHC and the Released Parties for any taxes due or owing by Class Counsel, the Plaintiff, and Premom Consumer Class Members on any payments hereunder. Payment for the attorneys' fees, costs, and expenses outlined herein shall come from the Gross Settlement Fund.

4.2 Payment for the services provided by the TPA set forth in this Agreement shall come from the Gross Settlement Fund.

4.3 Except for the fees, costs, and other expenses expressly set forth in this Section 4, the Parties shall bear responsibility for their own fees, costs, and expenses incurred by them or arising out of the litigation associated with this Civil Action and will not seek reimbursement thereof from any other party to this Agreement or the Released Parties.

4.4 Other than Class Counsel, there are no persons (natural or legal) having any interest in any award of attorneys' fees, expenses or litigation costs in connection with this Civil Action. Class Counsel agree to indemnify and hold EHC harmless as to (a) breach of the representations and warranties contained in this section; and (b) any claims by other persons or entities against EHC (or any of them) for such an award of attorneys' fees and/or litigation costs.

4.5 Class Counsel represent and warrant that they do not represent any current client with any claim against EHC that has, as of the date of the Agreement, not been filed and served upon EHC.

4.6 All dollar amounts in this Agreement are in United States dollars (USD).

V. ALLOCATION OF THE NET SETTLEMENT FUND

5.1 The allocated potential payment to each Participating Class Member shall be a pro-rated portion of the Net Settlement Fund. Under this Plan of Allocation, no gross payment to any Participating Class Member shall exceed thirty dollars ($30.00).

5.2 Each eligible Participating Class Member can receive up to $30.00 if they bought a router between August 21, 2020, and 60 days from the notice being emailed, or if they bought an iOS or Android smart phone within 60 days from the date of the notice being emailed.

5.3 To be eligible for payment, Participating Class Members must certify and provide proof of purchase that they purchased a new router after August 21, 2020 or purchased a new iOS or Android smart phone within 60 days of receiving notice of this settlement.

5.4 To be eligible for payment, Participating Class Members must certify that their purchase of a new iOS or Android smart phone or router was because of their concern that the Premom App violated their privacy.

5.5 To be eligible for payment, Participating Class Members must certify that they registered to use the Premom app onto an Android or iOS smart phone, tablet, or laptop between January 1, 2017 and August 31, 2020.

5.6 To be eligible for payment, Participating Class Members must further certify that:

(a) they have read and understand the contents of the Notice and this Claim Form, including the Releases provided for in the Settlement and the terms of the Plan of Allocation;

(b) they are member of the Class, as defined in the Notice, and not excluded by definition from the Class as set forth in the Notice;

(c) they have not submitted a request for exclusion from the Class;

(d) they have not submitted any other Claim covering the same purchases/acquisitions of a phone or router;

(e) they are subject to the jurisdiction of the Court with respect to this Claim and for purposes of enforcing the Releases set forth herein;

(f) they agree to furnish such additional information with respect to this Claim Form as Lead Counsel, the Claims Administrator, or the Court may require;

(g) they waive the right to trial by jury, to the extent it exists, and agree to the determination by the Court of the validity or amount of this Claim, and waive any right of appeal or review with respect to such determination;

(h) they acknowledge that they are bound by and subject to the terms of any judgment(s) that may be entered in the Action; and

(i) all information they provided on their claim form is true, correct, and complete, and that the documents they submit therewith are true and correct copies of what they purport to be.

5.7 For her service to Premom Consumer Class, and in recognition of the benefit she created, the Plaintiff will move the Court for an order to receive a service award in the amount of $2,000.00. EHC will not oppose this request. This amount shall be paid by the Payment Deadline shall be in addition to any payment made to Plaintiff pursuant to Section 5.1 and will be administered from the Gross Settlement Fund. An IRS Form 1099 shall be issued for this service award in the normal course of business, and any and all taxes relating to such payments shall be the sole responsibility of Plaintiff. Plaintiff agrees to indemnify and hold harmless EHC and the Released Parties for any taxes due or owing by Plaintiff on such service payment.

5.8 Plaintiff's service award shall be in addition to any payment made to Plaintiff pursuant to Section 5.1. Plaintiff shall also receive, and expressly reserves her right to seek, a pro-rated portion of the Net Settlement Fund so long as she returns a Claim and Release Form—along with all required documentation set forth in the Notice—by the Claim Deadline.

5.9 Since no pro-rated payments under this Plan of Allocation to Participating Class Members shall equal or exceed six hundred dollars ($600.00), no Party to this Agreement or the designated TPA shall be required to issue any IRS Form 1099 to any Participating Class Member other than Plaintiff.

VI. NOTICE TO THE CLASS MEMBERS & RIGHT TO OBJECT

6.1 Within twenty-one (21) days of the Court entering the Preliminary Approval Date, EHC shall provide the names and last known email addresses of the Premom Consumer Class that it has. Within thirty-five (35) days after the Preliminary Approval Date, the TPA shall send the Notices and Claim and Release Forms, in a format similar to Exhibits A and B attached hereto, via email to the Premom Consumer Class. The emailed Notice shall include an ability for recipients to process their claims and submit their Claim and Release Form, along with .pdfs or .jpgs of the required documents set forth in the Notice via a website created by the TPA for

processing such claims. The Parties will work with the TPA on an agreeable formatting regarding this email notice and related website consistent with the terms and requirements set forth on Exhibits A and B.

6.2 The Notice attached as Exhibit A will explain the nature of this Civil Action and how each Premom Consumer Class members' share was calculated based on the Plan of Allocation and will provide an opportunity for the Premom Consumer Class member to opt-out of this Settlement so that they can separately pursue their claims, if any, against EHC if they choose. It will also inform the Premom Consumer Class member of the Released Claims against the Released Parties. The Notice Premom Consumer Class members will also inform them of the date of the Fairness Hearing and the process for objecting to the Settlement.

6.3 Each Notice shall also provide Premom Consumer Class members Class Counsel's contact information and a tollfree number to obtain more information regarding the Notice and Settlement (said number to be set up and staffed by the TPA). The TPA shall also make available a complete copy of this Agreement on the website established to administer these claims.

6.4 The TPA shall inform Class Counsel and Defense Counsel of the date the Notice was sent to the Premom Consumer Class.

VII. CLAIM, FUNDING PROCESS & NONPARTICIATION

7.1 A Premom Consumer Class member's Claim and Release Form must be post-marked, or returned via facsimile or e-mail, by the Claim Deadline. No payment shall be made later the Payment Deadline. Per a request, the TPA shall provide to Class Counsel and Defense Counsel the executed Claim and Release Forms and supporting documents (including forms where any such person "opts-out" of the Settlement), and/or an Excel spreadsheet reflecting the gross payout from the Net Settlement Fund for each Participating Class Member.

7.2 Any Premom Consumer Class member's objection to the Settlement must be post-marked, or returned via facsimile or e-mail, by the Claim Deadline to the TPA. The TPA shall provide Class Counsel and Defense Counsel a copy of any objection upon its receipt per the

requirements set forth in the Notice, and Class Counsel shall timely file said objections with the Court.

7.3 Within seven (7) days after Final Approval, and consistent with the Court's Final Approval Order, the TPA shall inform EHC of the amount of funds necessary to make: (a) distributions to the Participating Class Members; payments to Class Counsel set forth in Section 4.1; payment of the service award to Named Plaintiff set forth in Section 5.2; and payment to the TPA for its costs associated with processing the Notice and payments set forth in this Settlement Agreement. Within twenty-eight (28) days of the Final Approval, EHC shall transfer this amount of funding to the TPA per its instructions.

7.4 The TPA shall make payments to the Participating Class Members by the Payment Deadline. The face of each check sent to Participating Class Members, or bolded language of a notice enclosed with each check, shall clearly state that the check must be cashed within one-hundred and twenty (120) calendar days.

7.5 Participating Class Members shall have one-hundred and twenty (120) calendar days from the date the settlement checks are mailed to them by the TPA to cash or otherwise negotiate their settlement checks. If any such Participating Class Member does not cash or otherwise negotiate either check within that 120-day period, such checks will be void and a stop-pay notice will be placed on such unnegotiated checks. In such event, those Participating Class Members will be deemed to have waived irrevocably any right in or claim to settlement funds, and any such funds shall revert from the TPA to EHC. Such Participating Class Members who returned a Claim and Release Form indicating their desire to participate in the Settlement, but did not cash or otherwise negotiate either check, will nevertheless be bound by this Agreement and the Release provisions contained herein.

7.6 Premom Consumer Class members who return a Claim and Release Form indicating their desire to not participate in the Settlement will be deemed to have waived irrevocably any right in or claim to any funds under this Settlement but will not be deemed to

have waived their right to assert any of the Released Claims against any of the Released Parties in a separate legal proceeding if they so choose.

7.7 Premom Consumer Class members who do not return a Claim and Release Form, or fail to timely return a Claim and Release Form by the Claim Deadline, will not participate in the Settlement and will be deemed to have waived irrevocably any right in or claim to any funds under this Settlement and will not be deemed to have waived their right to assert any of the Released Claims against any of the Released Parties in a separate legal proceeding if they so choose.

VIII. RELEASES BY CLASS MEMBERS AND COVENANT NOT TO SUE

8.1 By operation of this Agreement and except as to such rights or claims as may be created by this Agreement or those non-waivable by law, the Plaintiff, and her respective heirs, personal representatives, ancestors, beneficiaries, designees, legatees, executors, administrators, successors-in-interest, immediate family, and assigns hereby irrevocably and unconditionally forever and fully releases and discharges EHC and the Released Parties for the Released Claims she ever had, may now have or hereafter can, shall or may have .

8.2 By operation of this Agreement and except as to such rights or claims as may be created by this Agreement or those non-waivable by law, the Participating Class Members, and their respective heirs, personal representatives, ancestors, beneficiaries, designees, legatees, executors, administrators, successors-in-interest, immediate family, and assigns hereby irrevocably and unconditionally forever and fully releases and discharges EHC and the Released Parties for, the Released Claims she ever had, may now have or hereafter can, shall or may have.

8.3 By operation of this Agreement and except as to such rights or claims as may be created by this Agreement or those non-waivable by law, Premom Consumer Class members from all states and territories of the United States who do not return a Claim and Release Form, or fail to timely return a Claim and Release Form by the Claim Deadline, and their respective heirs, beneficiaries, designees, legatees, executors, administrators, successors-in-interest, and

assigns hereby irrevocably and unconditionally forever and fully release and discharge EHC and the Released Parties for the Released Claims she ever had, may now have or hereafter can, shall or may have.

8.4 By operation of this Agreement and except as to such rights or claims as may be created by this Agreement or those non-waivable by law, Plaintiff, Participating Class Members, and their respective heirs, beneficiaries, immediate family, personal representatives, ancestors, designees, legatees, executors, administrators, successors-in-interest, and assigns hereby absolutely, unconditionally and irrevocably, covenant and agree that they will not sue (at law, in equity, in any regulatory proceeding or otherwise) EHC or any other Released Party on the basis of or in connection with any Released Claim. If Plaintiff or any Participating Class Member violates the foregoing covenant, Plaintiff and Participating Class Members, and each of their successors, assigns and legal representatives, agree to pay, in addition to such other damages as EHC or any other Released Party may sustain as a result of such violation, all attorneys' fees and costs incurred by EHC or any other Released Party as a result of such violation.

IX. NON-ADMISSION

9.1 EHC expressly denies any wrongdoing, including but not limited to alleged wrongdoing associated with the claims in the Civil Action, and makes no admission of liability. EHC maintains that it has complied with applicable federal, state, and local laws at all times. It is expressly understood and agreed by the Parties that this Agreement is being entered into by EHC solely for the purpose of avoiding the cost and disruption of ongoing litigation and defending any claims that have been or could be asserted in this Civil Action. Nothing in this Agreement, the settlement proposals exchanged by the Parties, or any motions filed or orders entered pursuant to this Agreement, may be construed or deemed as an admission by EHC of any liability, culpability, negligence, or wrongdoing, and this Agreement, including its provisions, its execution, and implementation, including any motions filed or orders entered, shall not in any respect be construed as offered or deemed admissible as evidence, or referred to in any

arbitration or legal proceeding for any purpose, except in an action or proceeding to approve, interpret, or enforce this Agreement.

9.2 In the event the Court does not approve this Agreement, the Parties agree this Agreement is not meant to be, and will not be, construed as an admission that EHC is liable for damages in the Civil Action or any other litigation or proceeding. Further, in the event the Court does not approve this Agreement, EHC reserves the right to deny it engaged in activity that would warrant any damages.

9.3 This Agreement relates solely to the certification of a class for settlement purposes only. The Parties have not made, nor is any court required to make, any evaluation or finding of manageability of the Premom Consumer Class within the meaning of Federal Rule of Civil Procedure 23.

9.4 In the event that the Court does not approve this Agreement (or any appellate court reverses approval of this Agreement or certification of the Premom Consumer Class), the Parties agree that EHC reserves the right to contest certification of the Premom Consumer Class. Further, nothing in this Agreement, nor information exchanged solely in support of this agreement or within settlement negotiations, shall be utilized (1) to prosecute or defend against the claims or (2) in support of or opposition to any motion to decertify a class in in the Civil Action or any other litigation against EHC.

X. DUTIES OF THE PARTIES TO OBTAIN COURT APPROVAL

10.1 In connection with seeking Preliminary Approval by the Court of the Settlement, and consistent with any direction provided by the Court, Class Counsel and Defense Counsel will submit a proposed Order for the Court's review and consideration granting class certification; preliminarily approving the Agreement; adjudging the terms thereof to be fair, reasonable and adequate; and directing consummation of its terms and provisions regarding Notice to the Premom Consumer Class.

10.2 In connection with seeking Final Approval by the Court of the Settlement, and consistent with any direction provided by the Court, Class Counsel and Defense Counsel will

submit a proposed Order for the Court's review and consideration granting final approval to the Agreement; adjudging the terms thereof to be fair, reasonable and adequate; directing consummation of its terms and provisions; dismissing the Civil Action on the merits and with prejudice and permanently bar all Premom Consumer Class members—with the exception of this who opt-out as addressed in Section 6.2 above—from prosecuting against any Released Parties any of the Released Claims; and for the Court to retain jurisdiction to enforce the terms of the Agreement.

XI. PARTIES' AUTHORITY

11.1 The signatories hereby represent that they are fully authorized to enter into this Agreement and to bind the Parties hereto to the terms and conditions hereof.

11.2 The Parties hereby mutually represent and warrant to each other that they have not assigned, transferred or otherwise conveyed to any person or entity any actions, causes of action, etc. against the other.

11.3 All of the Parties acknowledge that they have been represented by competent, experienced counsel throughout all negotiations, which preceded the execution of this Agreement, and this Agreement is made with the consent and advice of Class Counsel and Defense Counsel, who have jointly prepared this Agreement.

XII. MUTUAL FULL COOPERATION

12.1 The Parties agree to use their best efforts and to fully cooperate with each other to accomplish the terms of this Agreement, including but not limited to, execution of such documents, and to take such other action as may reasonably be necessary to implement and effectuate the terms of this Agreement.

XIII. SETTLEMENT OF DISPUTES

13.1 All disputes relating to this Agreement and its implementation shall be within the continuing jurisdiction of the Court over the terms and conditions of this Agreement, until all payments and obligations contemplated by the Agreement have been fully carried out.

XIV. NOTICES

14.1 Unless otherwise specifically provided herein, all notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of the third business day after mailing by United States registered or certified mail, return receipt requested, addressed as follows:

To Named Plaintiff or any other Class Member:

Brendan J. Donelon
DONELON, P.C.
4600 Madison, Ste. 810
Kansas City, MO 64112
816-221-7100
Facsimile: 816-709-1044
brendan@donelonpc.com

To EHC (Easy Healthcare Corporation):

Brenda R. Sharton
DECHERT LLP
One International Place, 40th Floor
100 Oliver Street
Boston, MA 02110-2605
Telephone: (617) 728-7100
Facsimile: (617) 275-8374
Brenda.Sharton@dechert.com

Benjamin M. Sadun
DECHERT LLP
US Bank Tower
633 West 5th Street, Suite 4900
Los Angeles, CA 90071-2032
Telephone: (213) 808-5700
Facsimile: (213) 808-5760
Benjamin.Sadun@dechert.com

XV. AMENDMENTS/MODIFICATION

15.1 No waiver, modification, or amendment of the terms of this Agreement and/or its attachments shall be valid or binding unless in writing, signed by and on behalf of all of the

Parties, and then only to the extent set forth in such written waivers, modifications, or amendments, and approved by the Court.

XVI. ENTIRE AGREEMENT

16.1 This Agreement, its attachments, constitute the entire agreement between the Parties concerning the subject matter hereof. No extrinsic oral or written representations or terms shall modify, vary or contradict the terms of this Agreement. In the event of any conflict between this Agreement and any other Settlement-related document, the Parties intend that this Agreement shall be controlling.

XVII. CONTINUING JURISDICTION

17.1 The Parties request that the Court retain continuity and exclusive jurisdiction over the Parties for the purposes of the administration and enforcement of this Agreement. Approval of the Agreement will not depend upon the Court granting this request and the fact that the Court declines to exercise such jurisdiction will not impact the enforceability of this Agreement.

XVIII. COUNTERPARTS

18.1 This Agreement may be executed in counterparts, and when each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Agreement, which shall be binding upon and effective as to all Parties.

XIX. NO THIRD-PARTY BENEFICIARIES

19.1 This Agreement shall not be construed to create rights in, or to grant remedies to, or to delegate any duty, obligation, or undertaking established herein to any third party as a beneficiary of this Agreement.

XX. BINDING AGREEMENT

20.1 This Agreement shall be binding upon, and inure to the benefit of, the Parties and their affiliates, agents, employees, beneficiaries, heirs, executors, administrators, successors, and assigns.

XXI. VOIDING THE AGREEMENT

21.1 In the event this Agreement, or any amended version agreed upon by the Parties does not obtain judicial approval for any reason, this Agreement shall be null and void in its entirety, unless expressly agreed in writing by all Parties. If this Agreement becomes void for any reason, including failure to obtain judicial approval, EHC reserves all right to litigate and oppose Plaintiff's claims and to oppose class certification.

XXII. DISPARAGAMENT

22.1 Plaintiff and Class Counsel agree not to make or release, directly or indirectly, whether in such party's own name or in any alias or pseudonym, any statement or communication that is intended, or may reasonably be expected, to harm the reputation, goodwill, business, business relationships, prospects or operations of any of the Released Parties. The statements and communications barred by this paragraph shall include, but are not limited to, statements made to or through newspapers, magazines, television, radio, internet, social media, or any other media whether national, local or international.

XXIII. GOVERNING LAW

23.1 This Agreement, and the exhibits hereto, shall be considered to have been negotiated, executed, and delivered, and to have been wholly performed in the State of Illinois, and the rights and obligations of the Parties shall be construed and enforced in accordance with, and governed by, the substantive laws of the State of Illinois without giving effect to that state's choice of law principles.

XXIV. PRIVACY OF DOCUMENTS AND INFORMATION

24.1 All agreements made, and orders entered during the course of the Civil Action relating to the confidentiality of information shall survive this Agreement.

24.2 Plaintiff and Class Counsel agree that they will not disclose to any third parties, or use for any purpose, documents and information obtained in the course of the litigation, including information exchanged pursuant to settlement discussions, except that this Section shall not apply in any action to enforce or interpret the terms of this Agreement, and also shall

not apply to the extent that any party is required by subpoena or other legal process to disclose this information (in which event, the Party receiving any such subpoena, order, or other legal process shall give written notice to the other Party pursuant to the provisions of Section 14 at least seven (7) days prior to responding). The terms of the Agreed Confidentiality Order, as approved by the Court, shall continue to remain in full force and effect, notwithstanding anything to the contrary in this Agreement.

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement as of the date indicated below:

Dated: 31 March, 2023

By:_____
Jena Hecker

Dated: April 2, 2023

DONELON, P.C.

By:_____
Brendan J. Donelon
4600 Madison, Ste. 810
Kansas City, MO 64112

Dated: April 3, 2023

By: XIAOLIAN LIU
Xiaolian Liu
Chief Executive Officer
Easy Healthcare Corporation

Dated: April 3, 2023

By: Brenda Sharton
Brenda R. Sharton
Benjamin M. Sadun
DECHERT LLP

Attorneys for Easy Healthcare Corporation

EXHIBIT A

[Email Content]

"Premom" App Users
Notice of Class Action Settlement

Why did I get this Notice?

This is a court approved notice and is not an attorney solicitation. The case is: *Jena Hecker,* [Plaintiff] *et al. v. Easy Healthcare Corporation* [EHC], U.S. District Court—Northern District of Illinois, case no.: 1:21-cv-0349. EHC is the owner/developer of the "Premom" app. It has entered into a class action settlement agreement with the Plaintiff Jena Hecker on behalf of persons who registered to use EHC's "Premom" app. Records reflect that a person with this email address registered to use this app on an Android or iOS smart phone, tablet, or laptop computer. Therefore, notice of this settlement is being emailed to this address.

What is this Settlement for?

The Plaintiff filed this class action lawsuit and claimed that Premom violated its Privacy Policy by sharing the personally identifiable device information of persons who registered to use this app after October 1, 2017. The personally identifiable device information would include advertising IDs, router IDs, serial numbers, *etc.* related to app users' devices. Plaintiff claims that the only way to remedy the sharing of this information is replacing hardware such as cell phones and routers. Premom denies any and all wrongdoing including any violation of its Privacy Policies.

The Plaintiff and EHC agreed to settle the Lawsuit in mediation. By this agreement, the parties avoid the cost and uncertainty of further litigation, trial, and appeals. Counsel for EHC and Plaintiff negotiated the terms of the settlement described in this notice.

No evidence has shown that Premom shared any personal medical information, names, birthdays, email addresses, physical addresses, or other personal information of Premom users.

How much could I receive?

The purpose of this settlement is to provide remedy toward the replacement costs of Android and iOS smart phone or routers. Each eligible class member can receive up to $30.00 if they bought a router between August 21, 2020, and 60 days from notice being emailed or if they bought an iOS or Android smart phone within 60 days from the date of the notice being emailed. The allocated potential payment to each Participating Class Member shall be a pro-rated portion of the Net Settlement Fund. Under this Plan of Allocation, no gross payment to any Participating Class Member shall exceed thirty dollars ($30.00) under the terms of the settlement agreement.

Deadline to make my claim:

You must complete the claim form (see next section) by [date = 60 days from email being sent]

How do I make a claim to receive payment?

You will need to complete an on-line claim form and provide a copy of a receipt or other proof of purchase for any Android or iOS smart phone, or router after August 21, 2020. In the claim form, you will be asked to certify (i) the year and month you first registered to use the Premom App, and (ii) that you purchased a new Android or iOS smart phone or router after August 21, 2020 *because* of the allegation that Premom violated its Privacy Policy by sharing personally identifiable device information.

If you did not purchase a new Android or iOS smart phone or router *because* of these allegations, you are not eligible for payment and should not submit this form.

To complete this claim form: click here.

Copy of Complete Settlement Agreement:

For a copy of the complete settlement agreement: click here.

Do I have to Participate?

No. If you do not want to participate in this settlement, you are not required. If you would like to opt-out of this agreement and pursue this claim on our own with your own legal counsel, you can. To do so, you must "opt-out" by [date = 60 days from date notice is emailed]. If you would like to opt out, click here.

Can I object to this Settlement?

Yes. If you would like to object to this settlement, you have until [date = 60 days from date notice is emailed] to file your objection. If you would like to object to this settlement: click here.

Questions About this Notice?

800-_____

The Plaintiff and class members are represented by Brendan J. Donelon and Daniel W. Craig, the law office of DONELON, P.C.; 4600 Madison, Suite 810, Kansas City, Missouri 64112. 816-221-7100.

EXHIBIT B

[Claim Form Landing page]

You have arrived at the Claim Form page for the class action settlement in the matter of *Jena Hecker,* [Plaintiff] *et al. v. Easy Healthcare Corporation* [EHC], U.S. District Court—Northern District of Illinois, case no.: 1:21-cv-0349.

Submission of this Claim Form does not guarantee that you will share in the proceeds of the Settlement. The distribution of the Net Settlement Fund will be governed by the Plan of Allocation set forth in the Notice, if it is approved by the Court, or by such other plan of allocation as the Court approves.

If the Court approves the Settlement, payments to eligible Claimants pursuant to the Plan of Allocation (or such other plan of allocation as the Court approves) will be made after the completion of all claims processing.

Claim Deadline: [date = 60 days from mailing]

If you have any questions regarding this notice or the claim process, please contact _____ @ 800 _____

For a complete copy of the Settlement Agreement: click here.

CLAIM FORM:

By submitting a signed Claim Form, you will be swearing to the truth of the statements contained therein and the genuineness of the documents attached thereto.

By executing this Claim Form, you will be releasing the "released parties" of the "released claims."

"Released Parties" means EHC and their predecessors, successors, and present, future and former affiliates, parents, subsidiaries, divisions, insurers, reinsurers, officers, directors, board members, principals, attorneys, agents, representatives, employees, and assigns, including, without limitation, any investors, trusts, or other similar or affiliated entities and all persons acting by, through, under, or in concert with any of them, including any party that was or could have been named as a EHC in the Action.

"Released Claims" means all actions, claims, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, complaints, charges, commissions, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, liabilities, obligations, complaints, rights, and demands whatsoever, at law, admiralty or in equity, whether known or unknown, suspected or unsuspected, against EHC or any Released Party, under federal law or the law of any state (from any of the 50 states and United States territories), including those relating in any way to (i) EHC's collection, use, storage, transmission, disclosure, or sharing of any data from, regarding, or belonging to users of the Premom App and (ii) any agreements, contracts, disclosures, non-disclosures, obligations, acts, or omissions regarding the collection, use, storage, transmission, disclosure, or sharing of such data to the maximum extent allowed by law. Such data includes, but is not limited to, user inputs,

metadata, device identifiers, app events and other analytics data, location data, health data, personally identifying information, and biometric data. Such claims include, but are not limited to, all claims that have been, are, or could have been alleged in this Action, including EHC's alleged wrongful sharing to third parties. For the avoidance of doubt, this includes, but is not limited to, all claims arising out of or relating to any of EHC's practices, acts, or omissions alleged, described, or implied by the public news articles described in Exhibit D to the Settlement Agreement.

Claimant's information

Last Name:
First Name:
Address 1:
Address 2:
City State Zip:
Email:
Email registered to your "Premom" account:

Have you personally registered to use the Premom app on an Android or iOS smart phone, tablet, or laptop?
[Yes box] [No box]

When did you first register to use the Premom app?
_____

Have you personally purchased a new Android or iOS smart phone or router since August 21, 2020?
[Yes box] [No box]

When did you purchase the new Android or iOS smart phone or router?
[Month/day/year]

Amount of purchase for new router, or new Android or iOS smart phone:
$ _____ Note: under the settlement agreement, the maximum amount of payment/reimbursement you can receive is $30.00.

Reason for Purchase: Did you purchase your new router or new Android or iOS smart phone *because* of the allegation that Premom violated its Privacy Policy by sharing personally identifiable device information?
[Yes box] [No box]

Attachment of proof of purchase. Please attach a .jpg or .pdf file of your receipt or proof of purchase for the device identified above.

CERTIFICATION

By signing and submitting this Claim Form, You agree to the release above and certify as follows:

1. I have read and understand the contents of the Notice and this Claim Form, including the Releases provided for in the Settlement and the terms of the Plan of Allocation

2. I am a member of the Class, as defined in the Notice, and I'm not excluded by definition from the Class as set forth in the Notice.

3. I have not submitted a request for exclusion from the Class.

4. I have not submitted any other Claim covering the same purchases/acquisitions of a phone or router.

5. I am subject to the jurisdiction of the Court with respect to this Claim and for purposes of enforcing the Releases set forth herein.

6. I agree to furnish such additional information with respect to this Claim Form as Lead Counsel, the Claims Administrator, or the Court may require.

7. I waive the right to trial by jury, to the extent it exists, and agree to the determination by the Court of the validity or amount of this Claim, and waive any right of appeal or review with respect to such determination.

8. I acknowledge that I am bound by and subject to the terms of any judgment(s) that may be entered in the Action; and

I CERTIFY THAT ALL OF THE INFORMATION PROVIDED BY ME ON THIS CLAIM FORM IS TRUE, CORRECT, AND COMPLETE, AND THAT THE DOCUMENTS SUBMITTED HEREWITH ARE TRUE AND CORRECT COPIES OF WHAT THEY PURPORT TO BE

/s/ [typed in signature of claimant] _____[date]

Click on "submit".

Or, you can print off a copy of this completed claim form, and along with a copy of your receipt or proof of purchase, mail to:

[TPA]

[Opt-Out Landing page]

You have arrived at the Opt-out page for the class action settlement in the matter of *Jena Hecker,* [Plaintiff] *et al. v. Easy Healthcare Corporation* [EHC], U.S. District Court—Northern District of Illinois, case no.: 1:21-cv-0349.

"Opt-Out" Deadline: [date = 60 days from mailing]

If you have any questions regarding this notice or the opt-out process, please contact _____ @ 800 _____

For a complete copy of the Settlement Agreement: click here.

Opt-out Form:

Last Name:
First Name:
Address 1:
Address 2:
City State Zip:
Email:
Email registered to your "Premom" account:

I hereby "opt-out" of the class action Settlement Agreement in the matter of *Jena Hecker,* [Plaintiff] *et al. v. Easy Healthcare Corporation* [EHC], U.S. District Court—Northern District of Illinois, case no.: 1:21-cv-0349. By doing so, I preserve my right to obtain my own legal counsel and pursue this matter on my own.

Date:
/s/ typed in signature

Click on "submit".

Or, you can print off a copy of this completed opt-out form and mail to:

[TPA]

The postmark for this mailing must be by [date = 60 days from mailing]

[Objection Landing page]

You have arrived at the Objection page for the class action settlement in the matter of *Jena Hecker,* [Plaintiff] *et al. v. Easy Healthcare Corporation* [EHC], U.S. District Court—Northern District of Illinois, case no.: 1:21-cv-0349. You would complete this page if you want to object to the settlement agreement reached by the parties.

The Judge presiding over this Lawsuit, the Hon. Steven C. Seeger, will conduct a Final Fairness Hearing at _____ [a.m./p.m.] on _____, 2023 in Division ___ of the United States District Court for the Northern District of Illinois located at 219 S. Dearborn St., Chicago, Illinois 60604. At this hearing, the Judge will decide whether the settlement is sufficiently fair and reasonable to warrant final court approval. You are not required or expected to attend the Fairness Hearing, but you can if you so desire.

"Objection" Deadline: [date = 60 days from mailing]

If you have any questions regarding this notice or the objection process, please contact _____ @ 800 _____

For a complete copy of the Settlement Agreement: click here.

Objection Form:

Last Name:
First Name:
Address 1:
Address 2:
City State Zip:
Email:
Email registered to your "Premom" account:
Reason(s) for your objection:

Will you be attending the fairness hearing in person? ___ yes ___ no
Do you intend on speaking at the fairness hearing? ___ yes ___ no
If you have any documents you would like to present regarding your objection, please attach a .jpg or .pdf file.

For the reasons set forth above, I hereby object to the class action Settlement Agreement in the matter of *Jena Hecker,* [Plaintiff] *et al. v. Easy Healthcare Corporation* [EHC], U.S. District Court—Northern District of Illinois, case no.: 1:21-cv-0349.

Date:
/s/ typed in signature

Click on "submit".

Or, you can print off a copy of this completed objection form and, along with any supporting documents, mail to:

[TPA]

The postmark for this mailing must be by [date = 60 days from mailing]

Exhibit C

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

JENA HECKER, *et al.*	)	
	)	
Plaintiffs,	)	
	)	Case no.: 1:21-cv-0349
vs.	)	
	)	
EASY HEALTHCARE CORPORATION	)	
	)	
Defendant.	)	

[PROPOSED] ORDER GRANTING CONDITIONAL CLASS CERTIFICATION & PRELIMINARY APPROVAL OF STIPULATION OF SETTLEMENT

The Court now takes up the Plaintiff's *Unopposed Motion for Preliminary Approval of Stipulation of Settlement Agreement and Release*. After review of said Motion and the supporting memorandum, the Court hereby finds as follows:

A. On **[***insert date of filing***]**, the Named Plaintiff Jena Hecker and Defendant Easy Healthcare Corporation ("EHC") filed with this Court a *Stipulation of Settlement Agreement and Release* ("Settlement").

B. In Plaintiff's Unopposed Motion for Preliminary Approval, the Parties are seeking conditional class certification under Fed.R.Civ.P. 23 for damages for breach of contract, fraud, and violation of the Illinois Consumer Fraud & Deceptive Business Practices Act, 815 ILCS § 505/1 *et seq.* ("ICFA"), regarding EHC allegedly sharing personal identifying information and data regarding users of its "Premom" App in violation of its Privacy Policies.

C. This Court has duly considered all of the submissions presented with respect to the Settlement.

D. All capitalized terms in this Order Granting Conditional Class Certification & Preliminary Approval of Stipulation of Settlement with respect to the Settlement that are not otherwise defined have the same meaning as in the *Stipulation of Settlement Agreement and Release* document submitted by the parties.

NOW THEREFORE, after due deliberation and for good cause, this Court hereby ORDERS that:

1. For the reasons set forth in the Memorandum in Support of the Plaintiff's Unopposed Motion for Preliminary Approval of Stipulation of Settlement and Release, this Court finds that the Plaintiff Hecker has sufficiently met the numerosity, commonality, typicality, and adequacy elements under Rule 23(a) and the predominance and superiority elements under Rule 23(b)(3) regarding the claims set forth in the Third Amended Complaint. Specifically, the class is sufficiently numerous that joinder is impracticable. The members share common issues of fact and law. The Plaintiff has claims that are typical of those of the Premom Consumer Class since they arise out of the same policies and practices and course of conduct of which all class members complain. The Plaintiff is an adequate representative of their respective classes since her interests are co-extensive with those of the Premom Consumer Class and are not in conflict with them. Plaintiff has also retained experienced counsel to represent the class. Questions of law and fact common to the Premom Consumer Class predominate over individualized issues, and class treatment is a superior way to fairly and efficiently adjudicate this controversy. In turn, Plaintiff Jena Hecker is appointed as Rule 23 class representative for the following class of employees:

> All persons located in the United States who have registered to use EHC's Premom application onto their smart phones, tablets, or laptop computers with the Android or iOS operating software systems.

2. These findings warrant preliminary certification to effectuate the terms of the Settlement.

3. Attorneys Brendan J. Donelon and Daniel W. Craig of the law office of DONELON, P.C. are appointed as Class Counsel.

4. The Settlement appears to be fair, reasonable, and adequate. It is in the best interests of the Premom Consumer Class and should be preliminarily approved. This is true

especially in the light of the benefits to the settlement class accruing therefrom; the substantial discovery and investigation conducted by Class Counsel prior to the proposed Settlement; the complexity, expense, risks, and probable protracted duration of further litigation; and given the financial condition of EHC, and the Plaintiff's ultimate ability to collect.

5. The Court has reviewed the terms and conditions of the Parties' Settlement, including the monetary relief provisions, the Plan of allocation, the Released Claims, and the Parties' detailed description of the Settlement regarding the claims. Based on these papers and the Court's familiarity with this case, the Court finds that the proposed Settlement is the result of extensive, arms-length negotiations between the Parties after Class Counsel and EHC's counsel had fully investigated the claims and become familiar with the strengths and weaknesses of Plaintiff's claims. The assistance of an experienced mediator and the length of the mediation process confirms that the settlement is not collusive. Based on all these factors, the Court finds that the proposed settlement has no obvious defects and is within the range of possible settlement approval such that notice to the class members as set forth in the Settlement is appropriate.

6. The Court has reviewed Plaintiff's proposed incentive award request. The Court preliminarily approves the use of the proposed Gross Settlement Fund to compensate Plaintiff with an award of $2,000 to compensate Plaintiff for her role as the proposed Class Representative. This provisional award recognizes Plaintiff's actions in assisting in the prosecution of this litigation.

7. The Court has reviewed Class Counsel's proposed attorneys' fee and costs reimbursement request. The Court preliminarily approves awarding up to 20% from the Gross Settlement Fund ($150,000) in fees and $2,685.00 in reimbursable costs to compensate provisional Class Counsel for their reasonable fees and costs incurred in this hard-fought

litigation, subject to a formal motion for attorney's fees and costs being submitted by provisional Class Counsel on or before [*insert date, 60 days before fairness hearing date*].

8. For purposes of the Settlement, the Court approves Kurtzman Carson Consultants LLC as the Third Party Administrator ("TPA").

9. The Notice and Claim and Release Forms attached as Exhibits A and B to the Settlement Agreement fully and accurately inform the Premom Consumer Class of all material elements of the action and the proposed Settlement.

10. The Notice also advises the class members of their right to not participate in the Settlement and informs them of their right to assert an objection at a Fairness Hearing to be held before this Court. The class members must exercise their right to opt-out of the Settlement within 60 days of the issuance of the Notice.

11. The Parties propose to disseminate Notices for the Premom Consumer Class via the only known contact information for said persons: email. Given the facts and circumstances of this case, this Court finds that the form and method of disseminating the Notices to the "Premom Consumer Class," as provided in the Settlement, is the best notice practicable and fully meets the requirements of applicable federal and state law.

12. The Court also finds that the proposed form and content of the Claim and Release Form fully comports with the requirements of applicable federal and state law.

13. Based on the foregoing, the proposed Notices and Claim and Release Forms attached as Exhibits A and B are hereby approved by the Court.

14. Within twenty-one (21) days after entry of this Order, the TPA shall issue the Notices via email to the Premom Consumer Class.

15. The Court schedules a fairness hearing on_____, 2023, at _____ [a.m./p.m.] to address: (a) whether the proposed Settlement should be finally approved as fair, reasonable, and adequate as to the Premom Consumer Class; and (b) Class Counsel's application for attorneys' fees, expenses and service award for Plaintiff.

Dated this _____ day of _____, 2023. **SO ORDERED:**

_____
Hon. Steven C. Seeger
United States District Judge

Exhibit D

1. Tonya Riley, *A popular fertility app shared data without user consent, researchers say*, Washington Post (Aug. 20, 2020), https://www.washingtonpost.com/technology/2020/08/20/popular-fertility-app-shared-data-without-user-consent-researchers-say/.

2. Tatum Hunter & Heather Kelly, *How to track your period without comprising your privacy*, Washington Post (June 24, 2022), https://www.washingtonpost.com/technology/2022/05/07/period-tracking-privacy/.

3. Joel Hruska, *Popular Fertility App Caught Selling Customer Data to Chinese Companies*, Extreme Tech (Aug. 21, 2020), https://www.extremetech.com/computing/314095-popular-fertility-app-caught-selling-customer-data-to-chinese-companies.

4. Donna Rosato, *What Your Period Tracker App Knows About You*, Consumer Reports (Jan. 28, 2020) https://www.consumerreports.org/health-privacy/what-your-period-tracker-app-knows-about-you-a8701683935/

5. Joel Reardon et al., International Computer Science Institute, *JPush Away Your Privacy: A Case Study of Jiguang's Android SDK* (Aug. 2020), https://www1.icsi.berkeley.edu/pubs/privacy/TR-20-001.pdf.

6. Chloe Taylor, *China to place government officials in 100 companies, including Alibaba*, CNBC (Sept. 23, 2019), https://www.cnbc.com/2019/09/23/china-to-place-government-officials-in-100-companies-includingalibaba.html.

7. Marianne Kolbasuk McGee, *Lawmakers Urge FTC To Enforce Health Breach Notification Rule*, Data Breach Today (Mar. 8, 2021), https://www.databreachtoday.com/lawmakers-urge-ftc-to-enforce-health-breach-notification-rule-a-16143.

8. Jessica Davis, *Congress Urges FTC Crackdown on Health Apps Via Breach Notice Rule*, Health IT Security (Mar. 8, 2021), https://healthitsecurity.com/news/congress-urges-ftc-crackdown-on-health-apps-via-breach-notice-rule.

9. Allison Grande, *Lawmakers Urge FTC To Begin Using Health Data Breach Rule*, Law 360 (Mar. 5, 2021), https://www.law360.com/articles/1362046/lawmakers-urge-ftc-to-begin-using-health-data-breach-rule.

10. HIPAA Journal, *FTC Urged to Enforce Breach Notification Rule When Fertility Tracking Apps Share User Data Without Consent* (Mar. 9, 2021), https://www.hipaajournal.com/ftc-urged-to-enforce-breach-notification-rule-when-fertility-tracking-apps-share-user-data-without-consent/.

11. Silviu Stahie, *FTC Urged to Enforce Rules that Protects User Health Data Shared with*

Fertility Apps, Bitdefender (Mar. 9, 2021), https://www.bitdefender.com/blog/hotforsecurity/ftc-urged-to-enforce-rules-that-protects-user-health-data-shared-with-fertility-apps/.

12. Press Release: CT and DC Attorneys General Question Premom Fertility App Over Privacy Concerns (September 2, 2020), https://portal.ct.gov/AG/Press-Releases/2020-Press-Releases/

13. Molly Longman, *This Fertility App Shared Data Without User Consent. Here's How Senators Are Fighting Back* (August 28, 2020), https://www.refinery29.com/en-us/2020/08/9993486/premom-fertility-app-data-sharing

14. IDAC Public Letter, *Re: Premom's Deceptive Privacy Practices Places Vulnerable Users' Data at Risk* (August 6, 2020), https://digitalwatchdog.org/wp-content/uploads/2020/08/IDAC-Federal-Trade-Commission-Letter.pdf

15. IDAC Public Letter, *Re: Premom's Deceptive Privacy Practices Places Vulnerable Users' Data at Risk* (August 6, 2020), https://digitalwatchdog.org/wp-content/uploads/2020/08/IDAC-Illinois-Attorney-General-Letter.pdf

16. IDAC Public Letter, *Re: Premom's Deceptive Privacy Practices Places Vulnerable Users' Data at Risk* (August 6, 2020), https://digitalwatchdog.org/wp-content/uploads/2020/08/IDAC-Google-Play-Letter.pdf

17. Kim Lyons, *Fertility app Premom reportedly shared customer data with Chinese companies* (August 20, 2020), https://www.theverge.com/2020/8/20/21377591/fertility-app-premom-reportedly-shared-customer-data-with-chinese-companies

18. Whitney Kimball, *Chinese Advertisers Might Have Monetized Your Period* (August 20, 2020), https://gizmodo.com/chinese-advertisers-might-have-monetized-your-period-1844790460

19. Anna Halkidis, *Popular Fertility App Shared Data Without User Consent And Here's Why That Matters* (September 18, 2020), https://www.parents.com/getting-pregnant/fertility/boost/popular-fertility-app-shared-data-without-user-consent-and-heres-why-that-matters/

20. Bloomberg Law, *Fertility Tracking Apps Get Tough Look From States Over Privacy* (October 14, 2020), https://news.bloomberglaw.com/privacy-and-data-security/fertility-tracking-apps-get-tough-look-from-states-over-privacy

21. Chris Rodrigo, *Bipartisan senators call for investigation of popular fertility app* (August 28, 2020), https://thehill.com/policy/technology/514169-bipartisan-senators-call-for-investigation-of-popular-fertility-app/

22. Herb Scribner, *This popular fertility app may have shared your data without consent,*

researchers say (August 21, 2020), https://www.deseret.com/u-s-world/2020/8/21/21377203/premom-fertility-app-data

23. Legal Army, Una app de fertilidad comparte datos sin consentimiento de sus usuarias (October 9, 2020), https://www.legalarmy.net/una-app-de-fertilidad-comparte-datos-sin-consentimiento-de-sus-usuarias/

24. GDPR Buzz, *Popular fertility app Premom shared data without user consent* (August 22, 2020), https://gdprbuzz.com/news/popular-fertility-app-premom-shared-data-without-user-consent/

25. Ella Glover, *Popular fertility app found to have been sharing data without consent* (August 24, 2020), https://www.pcguide.com/news/popular-fertility-app-found-to-have-been-sharing-data-without-consent/