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Electronically FILED by Superior Court of California, County of Los Angeles 10/27/2026 5:10 PM David W. Slayton, Executive Officer/Clerk of Court, By S. Drew, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

JAMIE ORTEGA, SALLY SHIVELY, BETSY VERGARA, PATSYANN SUTTON, MARY PEREZ, and STEFANIE DIAMOND, on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

EMANATE HEALTH MEDICAL CENTER, and DOE DEFENDANTS 1-10,

Defendant.

Case No. 22STCV28142

NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND FOR ATTORNEYS' FEES, COSTS, AND SERVICE AWARDS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Declarations of Ryan J. Ellersick, John J. Nelson, and Ryan Aldridge filed concurrently

Hearing Date: November 19, 2026
Time: 10:30 a.m.
Judge: Honorable Carolyn B. Kuhl
Department: 12

Complaint Filed: August 30, 2022
Trial Date: Not Set

Notice of Motion and Motion for Final Approval of Class Action Settlement and for Attorneys' Fees, Costs, and Service Awards

TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD

PLEASE TAKE NOTICE THAT on June 1, 2026, the Honorable Carolyn B. Kuhl signed the Preliminary Approval Order for the class action Settlement Agreement in this matter and set a Final Approval Hearing for November 19, 2026, at 10:30 a.m., in Department 12 of the above-entitled Court, located at 312 N. Spring Street, Los Angeles, California 90012. At the Final Approval Hearing, Plaintiffs Sally Shively, Patsyann Sutton, Mary Perez, and Stefanie Diamond ("Plaintiffs") will, and hereby do, move for an order:

1. Confirming certification of the Settlement Class for settlement purposes;
2. Granting final approval of the Settlement;
3. Awarding Class Counsel attorneys' fees equal to $259,000;
4. Awarding Class Counsel reimbursement for litigation costs of $20,000.00;
5. Approving the payment of $57,145.87 in settlement notice and administration costs to the Settlement Administrator; and
6. Awarding each of the four Class Representatives a $2,500 service award ($10,000 total).

Plaintiffs' motion is based on this notice of motion and motion, the memorandum of points and authorities in support of the motion, the concurrently filed declarations of Ryan J. Ellersick, John J. Nelson, and Ryan Aldridge, all supporting exhibits filed herewith, as well as the records and files in this action and any argument as may be presented at the Final Approval Hearing.

Dated: October 27, 2026

Respectfully submitted,
By: /s/ Ryan J. Ellersick

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Memorandum of Points and Authorities

I. Introduction.

The Court signed the Preliminary Approval Order on June 1, 2026. In it, the Court found that, for purposes of settlement, the Settlement Class satisfies each of the requirements for certification of a settlement class, including numerosity, commonality, typicality, adequacy, predominance, and superiority (Declaration of Ryan J. Ellersick ("Ellersick Decl."), Ex. A ¶ 3); and that the Court-approved notices are "the best notice practicable" and "fully satisfy the California Rules of Court and due process of law" (*id.*, Ex. A ¶ 11). Nothing has changed since the Court signed the Preliminary Approval Order that would prevent final approval. Each requirement for settlement class certification continues to be met. The Settlement continues to be an excellent outcome for the Class that is well within the range of reasonable outcomes. Notice was sent to absent Class Members as ordered by the Court, and the Notice Program reached 37,215 Settlement Class Members (95.29%). (Declaration of Ryan Aldridge, ("Aldridge Decl.") ¶ 15.) Class Members' response to the Settlement has been overwhelmingly positive: there were no objections, only seven requests for exclusion, and 10.50% of Settlement Class Members submitted a claim. (Aldridge Decl. ¶¶ 16-18.) Plaintiffs therefore ask that the Court grant this Motion in full.

The Settlement Agreement establishes a $777,000, all cash, non-reversionary common fund. The $777,000 settlement fund falls well within the range of reasonable outcomes and compares favorably with the per-class-member recoveries in other approved healthcare pixel settlements. (Ellersick Decl. ¶ 13.) The settlement fund will be used to distribute cash benefits to Settlement Class Members as well as to pay any Court-approved deductions for notice and administration costs, attorneys' fees and costs, and service awards to the Class Representatives. The requested deductions—consistent with the Parties' Settlement Agreement and Preliminary Approval Motion—include: (i) notice and administration costs of $57,145.87; (ii) attorneys' fees of $259,000; (iii) reimbursable litigation expenses of $20,000.00; and (iv) service awards of $2,500 to each of the four Class Representatives ($10,000 total). After accounting for all requested deductions, the net settlement fund will total approximately $430,854.13. (Aldridge Decl. ¶ 16.) This amount will be distributed *pro rata* to the 3,867 Settlement Class Members who

submitted valid claims, resulting in an estimated payment of approximately $111.41 per claimant. (*Id.*) If the Settlement is approved, none of the gross settlement fund will revert to Defendant.

Class Counsel's requested attorneys' fees are reasonable. This is a non-reversionary cash common fund settlement, so the percentage method, with or without lodestar cross-check, may be used to assess the reasonableness of the requested fees. (*See Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503-506; Superior Court of Los Angeles County Checklist for Preliminary Approval of Class Action Settlement, at p. 5.) The requested fees total one-third of the settlement fund, which is the average award in class actions. (*Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11.) And the requested fee is less than Class Counsel's combined lodestar, representing a negative multiplier of approximately 0.68—well below the multipliers commonly found reasonable by California courts. (Ellersick Decl. ¶ 29.)

II. Summary of the Settlement.

Settlement Class. The Settlement Class includes "all identifiable individuals who logged into the Emanate patient portal, and/or submitted an online form and/or scheduled an appointment on Emanate's public website https://www.emanatehealth.org/ (the "Website"), in the time frame of August 30, 2019 to April 30, 2024." (Ellersick Decl., Ex. A ¶ 2.)

Settlement benefits. The Settlement provides for a non-reversionary cash common fund of $777,000, to be paid by Defendant Emanate Health Medical Center ("Emanate" or "Defendant"). (Ellersick Decl. ¶ 10.) All settlement payments and Court-approved deductions will be paid from this settlement fund. (Ellersick Decl. ¶ 12.) Settlement Class Members who submit timely and valid Claims will receive a *pro rata* cash payment from the net settlement fund based on the total number of timely and valid Claims. (Ellersick Decl. ¶ 10.) No portion of the Settlement Fund will revert to Emanate. (*Id.*)

The Settlement also provides for prospective relief. Emanate agreed to create a Web Governance Committee to assess the use of tracking tools on its website, and not to re-deploy the Meta Pixel or Google Analytics for a period of two years following Final Approval unless Emanate complies with certain restrictions. (Ellersick Decl. ¶ 11.)

Release. Under the Settlement, Class Members who do not exclude themselves release only those claims that were or could have been asserted in this case relating to, concerning, or arising out of

Emanate's use of analytics tools, such as the Meta Pixel and Google Analytics, on its Website. (*See* Settlement Agreement filed as Exhibit E to Declaration of Ryan J. Ellersick dated May 26, 2026 ("S.A.") ¶¶ 76-77, 79.) The scope of this release is consistent with governing California law and the Los Angeles Superior Court's Checklist for Preliminary Approval of Class Action Settlements. (See *Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 537.)

Attorneys' fees, litigation costs, and service awards. As contemplated by the Agreement, Class Counsel request $259,000 in attorneys' fees (one-third of the settlement fund), $20,000.00 for litigation expenses, and $2,500 for each of the four Class Representatives as service awards. S.A. ¶ 57 [attorneys' fees and costs]; *id.* ¶ 58 [service awards]. These amounts are consistent with the notice provided to Class Members. (*See* Exhibits B-D to Declaration of Ryna J. Ellersick dated May 26, 2026; Ellersick Decl., Ex. A ¶ 8.) Zimmerman Reed LLP and Milberg, PLLC have entered into a fee-sharing agreement to which the Class Representatives consented in writing, and that arrangement does not increase the total fees requested from the settlement fund. (Ellersick Decl. ¶ 31.)

Settlement notice and administration. The Court appointed Eisner Advisory Group, LLC ("EisnerAmper") as Settlement Administrator. (Ellersick Decl., Ex. A ¶ 5.) EisnerAmper provided notice to Class Members consistent with the Settlement Agreement and the Preliminary Approval Order. (Aldridge Decl. ¶¶ 4-10.) After performing an email hygiene and verification process, EisnerAmper sent email notice to 37,861 Settlement Class Members, of which 36,767 were successfully delivered. (*Id.* ¶ 6.) Mail notice was sent to another 463 Class Members, with supplemental mailings to 8 Class Members whose initial postcards were returned as undeliverable. (*Id.* ¶ 9.) As a result, approximately 95.29% of Settlement Class Members received direct notice of the Settlement through email or mail. (*Id.* ¶ 15.) EisnerAmper also sent two rounds of reminder email notices, on August 28, 2026 and September 18, 2026. (*Id.* ¶ 10.) The Settlement Administrator also established the Settlement Website, a 24/7 toll-free number, and a dedicated email address for the Settlement. (*Id.* ¶¶ 12-14.)

III. The Court should grant final approval of the Settlement.

A. The Court should confirm its certification of the Settlement Class.

In granting preliminary approval, the Court conditionally certified the Settlement Class. (Ellersick Decl., Ex. A ¶¶ 2-3.) Nothing has changed since preliminary approval that affects certification,

so the Court should reach the same conclusion here for all the reasons set forth in the Preliminary Approval Order. (See *Dickey v. Advanced Micro Devices, Inc*. (N.D. Cal. Feb. 21, 2020) 2020 WL 870928, at *4 [certifying class and noting that "[b]ecause no facts that would affect [the Rule 23] requirements have changed since the Court preliminarily approved the settlement on October 4, 2019, this order incorporates by reference its prior analysis as set forth in the order granting preliminary approval."].)

B. The Court should approve the Settlement as fair, reasonable, and adequate.

Before granting final approval, the Court must determine the settlement is "fair, adequate, and reasonable." (*Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1801.) At the preliminary approval stage, the Court preliminarily approved the Settlement. Since then, nothing has changed except that the Settlement Administrator enacted the Court-approved Notice Program, which reached approximately 95.29% of Class Members. (Aldridge Decl. ¶ 15.) And the Objection and Exclusion Deadline has now passed, with no objections and only seven requests for exclusion. (*Id.* ¶¶ 17-18.) Accordingly, the Settlement remains fair, reasonable, and adequate to Class members, and the Court should grant final approval.

a. The Settlement is entitled to the presumption of fairness.

"[A] presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." (*Dunk*, 48 Cal.App.4th at p. 1802.) Like at the preliminary approval stage, all applicable requirements are satisfied here.

(1) All negotiations related to the Settlement were completed at arm's length. Settlement negotiations were conducted at arm's length and with the assistance of a third party neutral. The Parties enlisted the services of an experienced mediator, Jill Sperber of Judicate West. (Ellersick Decl. ¶ 8.) After the Parties were unable to reach an agreement at the mediation, the Parties accepted a mediator's proposal in the days following the mediation. (*Id.*; see *In re MyFord Touch Consumer Litig.* (N.D. Cal. Mar. 28, 2019) 2019 WL 1411510, at *8 [observing that proposed settlement was "the product of arm's-length bargaining" where it was based on a mediator's proposal]; *Morales v. Stevco, Inc.* (E.D. Cal.

Nov. 10, 2011) 2011 WL 5511767, at *11 [settlement by means of a mediator's proposal non-collusive].) The Parties also did not discuss attorneys' fees, costs, or service awards until after the primary terms of the Settlement had been agreed upon. (Ellersick Decl. ¶ 8.)

(2) Class Counsel's investigation and discovery were sufficient to allow Counsel to act intelligently and make an informed decision on settlement. As detailed in the Preliminary Approval Motion, Class Counsel was well-informed in all negotiations and negotiated the Settlement only after significant analysis of the case, including through a pre-filing investigation of Emanate's deployment of the Meta Pixel and other tracking tools on its website; more than two years of litigation, including successfully opposing Emanate's demurrer; pre-mediation informal discovery, including data showing where and when the tracking tools were on Emanate's website and the number of patients potentially impacted; formal written discovery; researching and preparing the mediation statement; and confirmatory discovery in the form of a declaration from Emanate's Corporate Director of Risk Management. (Ellersick Decl. ¶¶ 4-8, 24.)

(3) Class Counsel are highly experienced litigators, with particular expertise in class litigation. As outlined in the Motion for Preliminary Approval, Class Counsel are well-qualified and have significant experience with data privacy class actions involving healthcare providers' use of tracking technologies. Based on their substantial experience, Class Counsel believe the Settlement is fair, reasonable, and adequate, and in the best interests of the Settlement Class, especially in light of the complexities of the case. (Ellersick Decl. ¶ 22.)

(4) No objections have been submitted. The deadline for Settlement Class Members to object to or opt out of the Settlement was August 31, 2026. (Aldridge Decl. ¶¶ 17-18.) Settlement Class Members' response to the Settlement has been overwhelmingly positive. There have been no objections. (*Id.* ¶ 18.) Out of 39,055 Settlement Class Members, only seven—six timely and one untimely—requested exclusion. (*Id.* ¶¶ 5, 17; *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1152-53 [observing that class response to the settlement was "overwhelmingly positive" when a "mere 80 of the 5,454 national class members elected to opt out" and nine objected].) And Settlement Class Members submitted 4,099 claims, a claims rate of 10.50%. (Aldridge Decl. ¶ 16; *Rael v. Children's Place, Inc.* (S.D. Cal. Jan. 28, 2020) 2020 U.S. Dist. LEXIS 13970, at *25 [noting

that "consumer class actions tend to result in claims rates in the low single digits" and collecting cases with claims rates at or below 2%].)

b. Other factors confirm that the Settlement is fair, reasonable, and adequate.

Similarly, as at preliminary approval, the other factors commonly considered by California courts also support approval. (See *Dunk*, 48 Cal.App.4th at p. 1801 [discussing (a) strength of plaintiffs' case; (b) risk, expense, complexity, and likely duration of further litigation; (c) risk of maintaining class action status; (d) the amount offered in settlement; (e) the extent of discovery completed; (f) the experience and views of counsel; (g) the presence of a governmental participant; and (h) the reaction of class members].) Here, there was no government participant. And, as discussed above, the reaction of Class Members to the Settlement has been overwhelmingly favorable. The other factors continue to show that the Settlement is fair, reasonable, and adequate.

The strength of Plaintiffs' case and the risks, expenses, and duration of continued litigation:

The risks, expenses, and duration of continued litigation favor approval of this Settlement. Privacy claims involving website tracking technologies have been dismissed at various stages, including at summary judgment and class certification. (See e.g., *Doe v. Eating Recovery Ctr. LLC* (N.D. Cal. 2025) 806 F. Supp. 3d 1109, 1119 [granting summary judgement to defendant on CIPA claim]; *Ingraham v. Cap. One Fin. Corp.*, No. 24-CV-05985-TLT, 2026 WL 1759155, at *8 (N.D. Cal. June 16, 2026) [denying class certification in case alleging CIPA and other wiretap violations related to tracking technologies on financial website].)

Plaintiffs' claims are particularly risky because healthcare pixel litigation is a developing area of law, and courts have issued conflicting rulings on the application of CIPA to healthcare providers' use of the Meta Pixel. (Ellersick Decl. ¶ 22.) In addition, at oral argument on Emanate's demurrer, the Court indicated that, while Plaintiffs' claims could move forward, Plaintiffs may face challenges at the class certification stage. (*Id.* ¶ 6.)

Even in the best-case scenario for Plaintiffs, extensive litigation would impose significant expense and delay, cutting into any ultimate relief achieved for the Class. (See *Schaffer v. Litton Loan Servicing, LP* (C.D. Cal. Nov. 13, 2012) 2012 WL 10274679, at *10 ["Even if the class were ultimately to prevail . . . trial and appeals would significantly delay class members' ability to obtain

compensation."].) "By contrast, the proposed settlement provides certain, timely, and substantial relief" for the Class. (See *Tait v. BSH Home Appliances Corp*. (C.D. Cal. July 27, 2015) 2015 WL 4537463, at *7.) Formal discovery had only just begun when the Parties reached a settlement, so absent settlement, the Parties would potentially face years of additional litigation. (Ellersick Decl. ¶¶ 7-8.) This process would be long and expensive, and even if successful, the Settlement Class would not receive any relief until it finished.

The risk of maintaining class action status through trial: Absent settlement, it is possible that Plaintiffs would not be able to certify or maintain a class. Indeed, the Court indicated at the demurrer hearing that Plaintiffs may face challenges at the class certification stage. (Ellersick Decl. ¶ 6.)

The amount offered and value of the Settlement: The relief provided to the class is the most important consideration in evaluating a potential settlement. (See *Bayat v. Bank of the West* (N.D. Cal. Apr. 15, 2015) 2015 WL 1744342, at *4.) Here, the $777,000 settlement fund and Emanate's agreement to create a Web Governance Committee and to refrain from re-deploying the Meta Pixel or Google Analytics absent compliance with certain restrictions is excellent relief, especially given the existence of serious obstacles to recovering on the claims. (Ellersick Decl. ¶¶ 10-11.) As described above, the $777,000 settlement fund amounts to a gross recovery of approximately $19.90 per Settlement Class Member, which compares favorably with the per-class-member recoveries in other approved healthcare pixel settlements. (*Id.* ¶¶ 13, 21; Aldridge Decl. ¶ 16.) This relief is well within the range of reasonable outcomes. (See *Wershba v. Apple Computer, Inc*. (2001) 91 Cal.App.4th 224, 250, disapproved on other grounds in *Hernandez v. Restoration Hardware, Inc*. (2018) 4 Cal.5th 260 [observing that "[a] settlement need not obtain 100 percent of the damages sought in order to be fair and reasonable" and settlements with even "relatively paltry" monetary benefits or "a fraction of the potential recovery" can be fair and reasonable.] And, in addition to the value of the injunctive relief that will inure to the benefit of the entire Class, each of the 3,867 claimants is expected to receive approximately $111.41 when the claims are prorated against the Net Settlement Fund.

The extent of discovery completed and the stage of the proceedings: "In the context of class action settlements, formal discovery is not a necessary ticket to the bargaining table where the parties had sufficient information to make an informed decision about settlement." (*7-Eleven Owners for Fair*

Franchising, 85 Cal.App.4th at p. 1150 [cleaned up].) Here, the Parties carefully analyzed the issues in the case through pre-suit investigations, litigation (including briefing and argument on Emanate's demurrer), and settlement negotiations. (Ellersick Decl. ¶¶ 4-8, 24.) Before mediation, Plaintiffs served informal discovery requests targeted to the issues relevant to settlement, as well as Special Interrogatories, Requests for Production, and a draft notice of deposition of Emanate's person most knowledgeable. (*Id.* ¶ 7.) The Parties also engaged in pre-mediation informal discovery to increase the likelihood of successful settlement discussions, including Emanate's production of data concerning where and when the tracking tools were on its website and the number of patients potentially impacted, followed by confirmatory discovery before the settlement papers were finalized, which allowed Class Counsel to make an informed decision about settlement. (*Id.* ¶¶ 7-8).

The experience and views of Counsel: As discussed above, Class Counsel have significant expertise in privacy class actions. (Ellersick Decl. ¶¶ 27-28) Based on that experience, Counsel is confident that the Settlement is fair, reasonable, and adequate, and in the best interests of the Settlement Class. (Ellersick Decl. ¶ 22.) This conclusion is supported by the fact that the Settlement's principal terms were proposed by the independent mediator who facilitated the Settlement. (*Id.* ¶ 8; *Dunk*, 48 Cal.App.4th at pp. 1802-03 ["[T]he record was ideal for the trial court to make a rational and educated determination [that] the settlement was fair, adequate and reasonable" in part because "[t]he independent mediator . . . with substantial experience and respect in the legal community, recommended the settlement."].)

IV. The Court should approve the requested deduction from the settlement fund for reasonable settlement notice and administration costs.

The Parties agreed to a robust notice process designed to reach all Class Members. To maximize the number of Class Members who submit claims, the Settlement Administrator conducted three rounds of email notice (the initial email plus two reminders). (Aldridge Decl. ¶¶ 6, 10.) For Class Members who could not be reached by email notice, the Settlement Administrator mailed 463 postcard notices, after validating mailing addresses against the National Change of Address database, and re-mailed notice to 8 Class Members for whom it obtained updated addresses. (*Id.* ¶¶ 7-9.) EisnerAmper also created the Settlement Website, a toll-free phone service, a dedicated email address, and a Post Office

Box for the Settlement; reviewed and processed submitted claims, identifying 215 submissions from non-Class Members and 17 duplicate claims; and processed requests for exclusion. (*Id.* ¶¶ 11-17.) EisnerAmper has incurred $41,371.15 in fees and costs to date and anticipates incurring an additional $15,774.72 to complete administration of the Settlement, for a total of $57,145.87. (*Id.* ¶ 19.) This amount is reasonable given the number of Class Members (39,055) and complexity of the settlement administration, and should be approved in full.

V. The Court should approve the requested deductions from the settlement fund for reasonable attorneys' fees.

Class Counsel respectfully request attorneys' fees equal to one-third of the common fund, or $259,000, the amount specific in the Settlement Agreement and Notices. While a lodestar cross-check is unnecessary here, the requested fee is less than Class Counsel's combined lodestar for past work, resulting in a negative multiplier of approximately 0.68 (Ellersick Decl. ¶ 29; Nelson Decl. ¶ 8) And Class Counsel expect to spend more time preparing for and attending the Final Approval Hearing, responding to inquiries from Settlement Class Members, and working with the Settlement Administrator to ensure settlement payments are sent out according to the Settlement Agreement and the Court's orders. (Ellersick Decl. ¶ 30.) In short, Counsel seeks the standard amount in attorneys' fees for efficiently achieving an excellent result for the Class.

A. The Court should use the preferred percentage-of-the-fund method for assessing the reasonableness of Class Counsel's requested attorneys' fees.

Although courts may use either the lodestar or the percentage method when assessing the reasonableness of attorneys' fees in common fund cases, (Superior Court of Los Angeles County Checklist for Preliminary Approval of Class Action Settlement, at p. 5), the percentage method is generally preferred. (*Laffitte*, 1 Cal.5th at p. 499 ["[T]he vast majority of courts nationwide . . . favor, or at least [] allow, use of the percentage-of-the-fund method in common fund cases."].) The percentage method is favored given the "relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation." (*Id.* at 503.) The lodestar method, by contrast, can create "undesirable incentives" to, for example, "extend the

litigation so that the attorneys can accrue additional hours (and thus, additional fees)," or to seek less than the maximum recovery for the class. (*Id.* at 494; see also *Lopez v. Youngblood* (E.D. Cal. Sept. 1, 2011) 2011 WL 10483569, at *4 [observing that drawbacks of lodestar method include that it "inadequately responds to the problem of risk," "increases the amount of fee litigation," "lacks objectivity," "can result in churning, padding of hours, and inefficient use of resources," and can discourage early settlement].)

Here, the requested fees are reasonable under either approach, but the Court, like other courts considering similar settlements, should use the favored percentage method.

B. The requested attorneys' fees are reasonable under the percentage method.

"[F]ee awards in class actions average around one-third of the recovery." (*Chavez*, 162 Cal.App.4th at p. 66 n.11; *Amaro*, 69 Cal.App.5th at p. 545 [same].) California courts regularly award fees in this range or higher. (E.g., *Laffitte*, 1 Cal.5th at pp. 487, 506 [affirming 33.33% fee award based on the percentage method]; *Roos v. Honeywell International, Inc.* (2015) 241 Cal.App.4th 1472, 1488, 1496 [affirming 37.5% fee award in $8,150,000 class settlement], disapproved on other grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260; *Rodriguez v. Cal. Payroll Group* (San Bernardino Super. Ct. Jan. 24, 2022) 2022 Cal. Super. LEXIS 47539, at *4-5 [collecting cases where California courts approved 35%; 40%; 40%; 40%; and citing California treatise finding that payment of 30% to 45% of the fund towards attorneys' fees has been determined to be reasonable].) [1]

Class Counsel respectfully request fees equal to the one-third average. Given the excellent result for the Class, this request falls well within the range of what courts regularly approve as reasonable.

[1]The Court may take judicial notice of Superior Court order under Evidence Code sections 452(c), section 452(d), and section 452(h) as these are "records of" a "court of this state," "[o]fficial acts" of the California judiciary, and because the existence and result of these orders is not reasonably subject to dispute. (See *In re Vicks* (2013) 56 Cal.4th 274, 314 [explaining that courts may take "judicial notice of court records" including "the existence of each document in a court file" and "the truth of results reached"].)

C. The requested fees are reasonable under the lodestar method.

Courts utilizing the percentage-of-the-recovery method sometimes utilize a lodestar "cross-check" to verify that a fee award is reasonable. California courts, however, "retain the discretion to forgo a lodestar cross-check." (*Laffitte*, 1 Cal.5th at p. 506.)

Courts considering a lodestar routinely approve fees with multipliers ranging from 2 to 4, and often even higher. (See *Wershba*, 91 Cal.App.4th at p. 255; *In re TFT-LCD Flat Panel Antitrust Litigation* (N.D. Cal. Nov. 9, 2012) 2012 U.S. Dist. LEXIS 207376, at *83 ["[C]ourts in California and nationwide routinely approve multipliers in the 4-6 range, with some as high as 19.6 or as low as .6." [citations omitted].) Here, by contrast, the requested fee represents a negative multiplier of approximately 0.68 on Class Counsel's lodestar for past work done in this case. (Ellersick Decl. ¶ 29.)[2]

Class Counsel's current lodestar for past work on this case is $378,350.20, consisting of Zimmerman Reed's lodestar of $240,010.30 for 322.87 hours and Milberg's lodestar of $138,339.90 for 182.5 hours.[3] (Ellersick Decl. ¶¶ 25-26, 29; Nelson Decl. ¶ 8) This does not include necessary additional work that needs to be done to ensure approval of the Settlement (such as preparing the final approval and fee motions, attending the Final Approval Hearing, corresponding with Class Members and the Settlement Administrator, and overseeing the distribution of settlement payments and any post-distribution proceedings). (Ellersick Decl. ¶ 30; see *Kangas v. Volkswagen Grp. of Am., Inc. (In re Volkswagen "Clean Diesel" Mktg., Prod. Liab. Litig.)* (9th Cir. July 23, 2018) 746 F.App'x 655, 659 [affirming district court's inclusion of future time in its lodestar cross check].)

This yields a negative multiplier of approximately 0.68 if only past work is considered, and lower still if future work is factored in. (Ellersick Decl. ¶¶ 29-30.) A lodestar analysis therefore supports the reasonableness of Class Counsel's requested fee award.

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[2]California courts often assess lodestars using attorney declarations attesting to their hours worked. (See *Sutter Health Uninsured Pricing Cases* (2009) 171 Cal.App.4th 495, 512; *Wershba*, 91 Cal.App.4th at pp. 254-55 ["California case law permits fee awards in the absence of detailed time sheets."].) But Counsel can provide billing records for the Court's *in camera* review upon request. (Ellersick Decl. ¶ 30.)

[3]Counsel's rates are in line with the non-contingent market rates charged by attorneys of reasonably comparable experience, skill, and reputation, have been approved by other courts, and are reasonable. (Ellersick Decl. ¶¶ 27-28; Nelson Decl. ¶¶ 9-11)

VI. The requested reimbursement for litigation costs is reasonable.

In addition to attorneys' fees, Class Counsel seek reimbursement for reasonable litigation costs. (S.A. ¶ 57.) Class Counsel have incurred a total of $34,400.79 in total litigation costs and expenses, but do not request more than the $20,000 maximum provided in the Settlement Agreement and disclosed to the Settlement Class. (Ellersick Decl. ¶¶ 12, 32-33; Nelson Decl. ¶ 13) Zimmerman Reed's expenses of $11,632 consist of court filing fees, attorney service and service-of-process charges, electronic service fees, legal research charges, mediation fees, pro hac vice and certificate-of-standing fees, and delivery charges. (Ellersick Decl. ¶ 32.) Milberg's expenses of $22,768.79 include fees for mediation, expert consultants, filing and service fees, printing/copying, and postage fees are set forth in the Nelson Declaration. (Nelson Decl. ¶ 13) Each expense was reasonably necessary, and the total costs are modest given the benefits to the Settlement Class. (Ellersick Decl. ¶ 32; *In re Immune Response Sec. Litig.* (S.D. Cal. 2007) 497 F.Supp.2d 1166, 1177-78 [finding that costs such as filing fees, photocopy costs, travel expenses, postage, telephone and fax costs, computerized legal research fees, and mediation expenses are relevant and necessary expenses in class action litigation].)

VII. The Court should approve the requested deduction from the settlement fund for reasonable Class Representative service awards.

"Incentive awards are fairly typical in class action cases." (*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1393-94 [cleaned up].) They are intended to compensate class representatives for work done and for risks taken, and to recognize their willingness to act as a private attorney general. (*Id.*) They "typically range from $2,000 to $10,000." (*Bellinghausen v. Tractor Supply Co.* (N.D. Cal. 2015) 306 F.R.D. 245, 267.) In some courts, $5,000 incentive awards are "presumptively reasonable." (*Id.*; see also *Cellphone Termination Fee Cases*, 186 Cal.App.4th at pp. 1393-95 [affirming $10,000 incentive award].)

The Class Representatives—Sally Shively, Patsyann Sutton, Mary Perez, and Stefanie Diamond—significantly contributed to the Settlement's success, and the requested $2,500 service award for each is below the "presumptively reasonable" standard. Each assisted in the investigation of their experiences with Emanate's website and the factual allegations of the complaint; reviewed the pleadings; remained available for consultation during settlement negotiations; answered Class Counsel's

questions; and reviewed and approved the terms of the Settlement Agreement. (Ellersick Decl. ¶ 34; Declarations of Representative Plaintiffs [filed March 3, 2026, as Exhibits 4 through 7 to Plaintiffs' Memorandum in Support of Motion for Preliminary Approval] ¶¶ 4-8.) In agreeing to serve as Class Representatives, Plaintiffs participated in this litigation for the benefit of the Class with no guarantee that the litigation would be successful or that their efforts would bear fruit. Each undertook the responsibilities of serving as a fiduciary for absent Settlement Class Members. (Ellersick Decl. ¶ 34; Representative Plaintiff Decls. ¶¶ 6, 9.) These efforts justify the requested $2,500 service awards.

VIII. The Court should authorize any remaining monies in the Net Settlement Fund to be distributed to the proposed cy pres

California courts recognize that distribution of residual funds to a *cy pres* that accomplishes the overarching purposes of the litigation "as near as possible," are appropriate. (See *In re Microsoft I-V Cases* (2006) 135 Cal. App. 4th 706, 730.) Here, the Settlement Agreement provides that any monies remaining in the Net Settlement Fund after 120 days from issuance of the payments to class members shall be distributed to the Electronic Frontier Foundation, a 501(c)(3) nonprofit organization dedicated to defending digital privacy. (S.A. ¶ 37.) Class Counsel have no connection to or relationship with the proposed *cy pres* that could reasonably create the appearance of impropriety as between the selection of the recipient and the interests of the class. (Ellersick Decl. ¶ 35; Nelson Decl. ¶ 17.)

IX. Conclusion.

For the foregoing reasons, Plaintiffs respectfully request that the Court grant this Motion and approve the Settlement.

Dated: October 27, 2026

Respectfully submitted,

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