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17 **UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

19
20 ERICA FRASCO, et al., individually and on
behalf of all others similarly situated,

21 Plaintiffs,

22 v.

23 FLO HEALTH, INC., META PLATFORMS,
24 INC., GOOGLE, LLC, and FLURRY, INC.,

25 Defendants.
26

Case No.: 3:21-cv-00757-JD

STIPULATION AND AGREEMENT OF
SETTLEMENT

Judge: Hon. James Donato

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STIPULATION AND AGREEMENT OF SETTLEMENT

1
2 THIS STIPULATION AND AGREEMENT OF SETTLEMENT (“Settlement Agreement”)
3 is entered into on March 20, 2025. This Settlement Agreement is entered into on behalf of Plaintiffs
4 Jennifer Chen, Erica Frasco, Tesha Gamino, Madeline Kiss, Autumn Meigs, Justine Pietrzyk, Leah
5 Ridgway, and Sarah Wellman (collectively, “Plaintiffs”), individually and on behalf of the proposed
6 Settlement Class, by and through their undersigned counsel (“Class Counsel”), and on behalf of
7 Defendant Flurry LLC (“Flurry”), by and through Flurry’s undersigned counsel (“Flurry’s Counsel”).
8 Capitalized terms shall have the meanings ascribed to them in Section 1 or as otherwise specified
9 herein.

10 **RECITALS**

11 **WHEREAS**, on January 29, 2021, Plaintiff Erica Frasco filed a complaint in the United States
12 District Court for the Northern District of California, which was later consolidated with *Madeline*
13 *Kiss v. Flo Health, Inc., et. al* (Case No. 4:21-cv-04333-DMR) and other pending related actions into
14 a consolidated class action, styled, *Erica Frasco, et al. v. Flo Health, Inc., et al.* (Case No. 3:21-cv-
15 00757-JD) (the “Action”);

16 **WHEREAS**, Plaintiffs filed a Consolidated Class Action Complaint (“Complaint”) on
17 September 2, 2021, alleging, among other things, that Defendant Flo Health, Inc. (“Flo”) improperly
18 disclosed Plaintiffs’ health data to the other Defendants (including Flurry), which provided analytics
19 services to Flo for its Flo Health mobile application, and seeking damages and injunctive relief;

20 **WHEREAS**, Flurry denies each and all of the claims and allegations of wrongdoing in
21 Plaintiffs’ pleadings, and maintains that it has good and meritorious defenses to the claims of liability
22 and damages, as well as the class certification arguments, made by Plaintiffs;

23 **WHEREAS**, Flurry is no longer in operation, has dissolved, and asserts that it has limited
24 funds with which to defend itself in this Action and/or pay any settlement or judgment arising from
25 this Action;

26 **WHEREAS**, Plaintiffs and Flurry (collectively, the “Parties”) participated in a mediation on
27 October 30, 2024 before Ambassador Jeffrey Bleich (Ret.) and agreed, by and through their respective
28 counsel, to certain terms to settle all claims that have been asserted or could have been asserted in the

1 Complaint or the Action against Flurry;

2 **WHEREAS**, the Parties now wish to avoid the costs and disruption associated with litigation
3 and to resolve the dispute between the Parties and any and all claims by Plaintiffs and the Settlement
4 Class;

5 **WHEREAS**, Class Counsel conducted an investigation of the facts and the law regarding the
6 Action, considered the Settlement set forth herein to be fair, reasonable, adequate, and in the best
7 interests of Plaintiffs and the Settlement Class, and determined that it is in the best interests of the
8 Settlement Class to enter into this Settlement Agreement in order to avoid the uncertainties of
9 complex litigation and to assure a benefit to the Settlement Class;

10 **WHEREAS**, Flurry, while continuing to deny that it committed any wrongful act or that it is
11 liable for the claims asserted against it in the Action, and believing that it has good and meritorious
12 defenses thereto, has nevertheless agreed to enter into this Settlement Agreement to avoid further
13 expense, inconvenience, and distraction of burdensome and protracted litigation, thereby putting this
14 controversy to rest and avoiding the risks inherent in complex litigation; and

15 **WHEREAS**, Plaintiffs, for themselves individually and on behalf of each Settlement Class
16 Member, and Flurry agree that neither this Settlement Agreement nor any statement made in
17 negotiation thereof shall be deemed or construed to be an admission or evidence by the Released
18 Flurry Parties of any violation of any statute or law or of any liability or wrongdoing by the Released
19 Flurry Parties or of the truth of any of the claims or allegations in the Action, and that this Settlement
20 Agreement and any statement made in negotiation thereof may not be used or offered in any
21 proceeding for any purpose against the Parties, except to enforce the terms of this Settlement;

22 **NOW, THEREFORE**, in consideration of the promises and covenants made by the Parties
23 in this Agreement, the sufficiency of which is hereby acknowledged, the Parties agree to the
24 following:

25 **1. Terms Used in This Agreement**

26 The words and terms used in this Settlement Agreement, which are expressly defined below,
27 shall have the meaning ascribed to them.

1 (A) **“Action”** means the consolidated class action styled, *Erica Frasco, et al. v. Flo*
2 *Health, Inc., et al.*, Case No. 3:21-cv-00757-JD (N.D. Cal.).

3 (B) **“Agreement” or “Settlement Agreement”** means this Stipulation and Agreement of
4 Settlement, together with any appendices and exhibits attached hereto, which are incorporated herein
5 by reference.

6 (C) **“Alternative Judgment”** means a form of final judgment that may be entered by the
7 Court herein but in a form other than the form of Final Judgment provided for in this Settlement
8 Agreement, provided that the Alternative Judgment may not differ in any material respect from the
9 form of Final Judgment provided for in this Settlement Agreement absent the Parties’ consent.

10 (D) **“Attorneys’ Fees and Expenses Award”** means the amount awarded by the Court to
11 be paid to Plaintiffs’ Counsel from the Settlement Fund, such amount to be in full and complete
12 satisfaction of Plaintiffs’ Counsel’s claim or request (and any request made by any other attorneys for
13 Plaintiffs or Settlement Class Members) for payment of reasonable attorneys’ fees and Litigation
14 Expenses in connection with the claims in the Action.

15 (E) **“Authorized Claimant”** means any Settlement Class Member who, in accordance
16 with the terms of this Settlement Agreement and orders of the Court, submits a timely and valid Proof
17 of Claim and Release form and is entitled to monetary relief from Flurry pursuant to this Settlement
18 Agreement or order of the Court.

19 (F) **“Business Day”** means Monday through Friday, inclusive, of each week unless such
20 day is a holiday in the United States pursuant to Fed. R. Civ. P. 6.

21 (G) **“Chubb Insurance Policy”** means the insurance policy associated with Policy No.
22 EON G21684077 015 issued by Chubb ACE American Insurance to Verizon Communications Inc.

23 (H) **“Claims Filing Deadline”** means the date set by the Court by which Settlement Class
24 Members must submit the Proof of Claim and Release form to the Settlement Administrator.

25 (I) **“Class” or “Settlement Class”** means all users of the Flo Health mobile application
26 who entered menstruation and/or pregnancy information into the Flo Health mobile application during
27 the period from November 1, 2016 through February 28, 2019, both dates inclusive (the “Class
28

1 Period”). Excluded from the Settlement Class are: (i) the officers and directors of Defendants; (ii) the
2 Opt-Outs; (iii) Plaintiffs’ Counsel; (iv) any judge presiding over this matter and the clerks of said
3 judges; and (v) the heirs, successors, assigns, and legal representatives of any excluded person, in
4 their capacity as such.

5 (J) “**Class Counsel**” means Christian Levis of Lowey Dannenberg, P.C., Carol C.
6 Villegas of Labaton Keller Sucharow LLP, and Diana J. Zinser of Spector Roseman & Kodroff P.C.

7 (K) “**Class Member(s)**” or “**Settlement Class Member(s)**” means a person or persons
8 who are members of the Settlement Class.

9 (L) “**Court**” means the U.S. District Court for the Northern District of California.

10 (M) “**Defendants**” means the defendants in the Action, which includes Flurry; Meta
11 Platforms, Inc. (f/k/a Facebook, Inc); Google, LLC; and Flo Health, Inc.

12 (N) “**Distribution Plan**” means the plan of allocation of the Net Settlement Fund
13 described in Section 9, or such other plan approved by the Court, whereby the Net Settlement Fund
14 shall in the future be distributed to Authorized Claimants.

15 (O) “**Effective Date**” means one Business Day after both the Final Approval Order and
16 Final Judgment become Final, provided the Settlement Amount has been paid in accordance with the
17 provisions of Section 3 and this Agreement has not been terminated in accordance with the provisions
18 of Section 16.

19 (P) “**Escrow Account**” means an account at a national banking institution, which may be
20 interest-bearing, which is mutually agreeable to Class Counsel and administered by the Settlement
21 Administrator.

22 (Q) “**Execution Date**” means the date on which this Agreement is executed by the last
23 Party to do so.

24 (R) “**Fairness Hearing**” means a hearing scheduled by the Court following the issuance
25 of the Preliminary Approval Order and Notice to consider the fairness, adequacy and reasonableness
26 of the proposed Settlement and Settlement Agreement, as well as Class Counsel’s motion for
27 attorneys’ fees, expenses, and Service Awards.
28

1 (S) **“Fee and Expense Application”** is defined in Section 12.

2 (T) **“Final”** means, with respect to any court order, including, without limitation, the Final
3 Judgment, that such order represents a final and binding determination of all issues within its scope
4 and is not subject to further review on appeal or other court review. An order becomes “Final” when:
5 (i) no appeal has been filed and the prescribed time for commencing any appeal has expired; or (ii)
6 an appeal has been filed and either (a) the appeal has been dismissed and the prescribed time, if any,
7 for commencing any further appeal has expired, or (b) the order has been affirmed in its entirety and
8 the prescribed time, if any, for commencing any further appeal has expired. Any appeal or other
9 proceeding pertaining solely to any order issued with respect to any Fee and Expense Application
10 pursuant to Section 12 below, shall not in any way delay or prevent the Final Approval Order or Final
11 Judgment from becoming Final.

12 (U) **“Final Approval Order”** means an order of the Court granting final approval of the
13 Settlement following: (i) preliminary approval of the Settlement Agreement, (ii) the issuance of the
14 Notice pursuant to the Preliminary Approval Order, and (iii) the Fairness Hearing.

15 (V) **“Final Judgment”** means the order of judgment and dismissal of the Action as to
16 Flurry and the released claims provided for in this Settlement Agreement, with prejudice and without
17 costs to any Party, except as provided herein, pursuant to the Final Approval Order.

18 (W) **“Flurry”** means Flurry LLC.

19 (X) **“Flurry Related Parties”** means Flurry’s past or present parents, affiliates,
20 subsidiaries, principals, successors, predecessors, assigns, assignees, officers, directors, shareholders,
21 owners, investors, trustees, partners, agents, legal representatives, fiduciaries, contractors, employees,
22 employers, attorneys, insurers, and advisors (including, but not limited to, College Parent, L.P.,
23 Yahoo Aggregation Holdings, LLC, Apollo Global Management, Inc., and Verizon Communications
24 Inc.), and the spouses, members of the immediate families, legal representatives, heirs, executors,
25 trustees, administrators, successors in interest, or assigns of the foregoing, as well as any trust of
26 which any excluded person is the settlor or which is for the benefit of any of their immediate family
27 members; any firm, trust, corporation, or entity in which Flurry has a controlling interest, each in their
28

1 respective capacity as such. For the avoidance of doubt, Flurry Related Parties does not include the
2 Non-Settling Defendants.

3 (Y) **“Flurry’s Counsel”** means Ann Marie Mortimer and Jason J. Kim of Hunton
4 Andrews Kurth.

5 (Z) **“Litigation Expenses”** means costs and expenses incurred by Plaintiffs’ Counsel in
6 connection with commencing, prosecuting, mediating, and settling the Action, and obtaining Final
7 Judgment.

8 (AA) **“Net Settlement Fund”** means the amount of funds that remain in the Settlement
9 Fund after payment of: (i) Notice and Settlement Administration Costs incurred pursuant to this
10 Settlement Agreement; (ii) Taxes; (iii) any Escrow Account costs to hold and invest the Settlement
11 Fund; (iv) any Attorneys’ Fees and Expenses Award approved by the Court; (v) Service Awards; and
12 (vi) any other costs or awards approved by the Court.

13 (BB) **“Non-Settling Defendants”** means Defendants in the Action other than Flurry.

14 (CC) **“Notice”** means the forms of notice of the proposed Settlement to be distributed to the
15 Settlement Class, as provided in this Settlement Agreement, the Preliminary Approval Order, and any
16 other order of the Court.

17 (DD) **“Notice and Settlement Administration Costs”** means all fees, costs, and expenses
18 related to the issuance of Notice to the Settlement Class and the administration of the settlement
19 process by the Settlement Administrator, including but not limited to the preparation and distribution
20 of the Court-approved notices, processing of Proofs of Claim, and issuance of payments to Authorized
21 Claimants.

22 (EE) **“Notice Date”** means the date by which implementation of the Notice Plan is to
23 commence, which shall be defined in the Preliminary Approval Order or such other order authorizing
24 the implementation of the Notice Plan.

25 (FF) **“Notice Plan”** means the plan and methods for distributing Notice to the Settlement
26 Class Members, as developed by the Settlement Administrator in collaboration with the Parties and
27 as set forth in Section 8.

28

1 (GG) “**Objection Deadline**” means the date set by the Court by which Settlement Class
2 Members must notify the Clerk of Court of their objection to the Settlement and/or the Fee and
3 Expense Application, pursuant to the requirements described herein, in the Notice, and in the
4 Preliminary Approval Order.

5 (HH) “**Opt-Out Deadline**” means the date set by the Court by which Settlement Class
6 Members must notify the Settlement Administrator of their request to be excluded from the Settlement
7 Class, pursuant to the requirements described herein, in the Notice, and in the Preliminary Approval
8 Order.

9 (II) “**Parties**” means Flurry and Plaintiffs collectively, and “**Party**” applies to each
10 individually.

11 (JJ) “**Person**” means a natural person, corporation, limited liability corporation,
12 professional corporation, limited liability partnership, partnership, limited partnership, association,
13 joint-stock company, estate, legal representative, trust, unincorporated association, proprietorship,
14 any business or legal entity, or any other entity or organization.

15 (KK) “**Plaintiffs**” means the named Plaintiffs in the Action— Jennifer Chen, Erica Frasco,
16 Tesha Gamino, Madeline Kiss, Autumn Meigs, Justine Pietrzyk, Leah Ridgway, and Sarah Wellman.
17 This Settlement Agreement is entered into with each and every Plaintiff. In the event that one or more
18 Plaintiff(s) fails to secure Court approval to act as a class representative, the validity of this Settlement
19 Agreement as to the remaining Plaintiffs, the Settlement Class, and Plaintiffs’ Counsel shall be
20 unaffected.

21 (LL) “**Plaintiffs’ Counsel**” means Class Counsel, together with Ronald A. Marron, Alexis
22 M. Wood, and Kas K. Gallucci of the Law Office of Ronald A. Marron, Kent Morgan Williams of
23 Williams Law Firm, and Will Harris II of Harris Legal Advisors LLC.

24 (MM) “**Preliminary Approval Order**” means an order of the Court, in a form to be agreed
25 upon by the Parties, issued in response to the Motion for Preliminary Approval described in Section
26 7.

1 (NN) **“Proof of Claim and Release” or “Claim Form”** means the form to be provided to
2 potential Settlement Class Members, upon further order(s) of the Court, by which Settlement Class
3 Members may make a claim to the Net Settlement Fund.

4 (OO) **“Released Flurry Parties”** means Flurry and the Flurry Related Parties.

5 (PP) **“Released Plaintiffs’ Claims”** means any and all actual, potential, filed, known or
6 unknown, fixed or contingent, claimed or unclaimed, suspected or unsuspected claims, demands,
7 liabilities, rights, causes of action, contracts or agreements, extracontractual claims, damages,
8 punitive, exemplary, or multiplied damages, expenses, costs, attorneys’ fees, or obligations (including
9 Unknown Claims) that have been, could have been, or could be brought, whether in law or in equity,
10 accrued or unaccrued, direct, individual, or representative, of every nature and description
11 whatsoever, whether based on federal, state, local, statutory, or common law or any other law, rule,
12 or regulation, against the Released Flurry Parties, or any of them, that arise out of or are related to the
13 allegations made in the Action, or that could have been made in the Action relating to the facts, events,
14 circumstances, or allegations of wrongdoing, from the beginning of time through and including the
15 Execution Date. Nothing herein is intended to release any claims any governmental agency or
16 governmental actor may have against the Released Flurry Parties.

17 (QQ) **“Releasing Plaintiff Parties”** means Plaintiffs and Settlement Class Members, as well
18 as any and all of their respective present, past, or future heirs, executors, estates, administrators,
19 trustees, predecessors, successors, assigns, partners, attorneys, legal representatives, and trusts, each
20 in their respective capacity as such.

21 (RR) **“Request for Exclusion”** means an individual Settlement Class Member’s written and
22 signed request to be excluded from, *i.e.*, opt out of, the Settlement Class.

23 (SS) **“Service Award”** means any award by the Court to named Plaintiffs, as further
24 described in Section 12, not to exceed \$2,000 per each named Plaintiff.

25 (TT) **“Settlement”** means the settlement of the Released Plaintiffs’ Claims and the released
26 Flurry claims on the terms and conditions set forth in this Settlement Agreement, subject to approval
27 of the Court pursuant to Fed. R. Civ. P. 23(e).

28

1 (UU) “**Settlement Administrator**” means the firm designated by Class Counsel that the
2 Court approves to perform the tasks necessary to provide notice of the Settlement to the Settlement
3 Class and to otherwise administer the Settlement, as described herein.

4 (VV) “**Settlement Amount**” means Three Million and Five Hundred Thousand U.S.
5 Dollars (\$3,500,000 USD).

6 (WW) “**Settlement Fund**” means the non-reversionary sum of the Settlement Amount, to be
7 paid by Flurry as specified in this Agreement, plus any interest accrued, which shall be used as the
8 only source of payment for all costs of the Settlement, including Taxes, and the claims of Authorized
9 Claimants. Flurry’s funding obligation under this Settlement Agreement shall under no circumstances
10 exceed the Settlement Amount.

11 (XX) “**Taxes**” means all federal, state, or local taxes of any kind on any income earned by
12 the Settlement Fund and the expenses and costs incurred in connection with the taxation of the
13 Settlement Fund (including, without limitation, interest, penalties, and the reasonable expenses of tax
14 attorneys and accountants).

15 (YY) “**Unknown Claims**” means any and all Released Plaintiffs’ Claims that Plaintiffs or
16 any other Settlement Class Members do not know or suspect to exist in his or her favor at the time of
17 the release of the Released Flurry Parties, and any and all released claims that Flurry does not know
18 or suspect to exist in its favor at the time of the Settlement, which if known by him, her, or it might
19 have affected his, her, or its decision(s) with respect to the Settlement, including the decision to object
20 to the terms of the Settlement or to exclude themselves from the Settlement Class. With respect to
21 any and all Released Plaintiffs’ Claims and released Flurry claims, the Parties stipulate and agree that,
22 upon the Effective Date, Plaintiffs shall have, and each Settlement Class Member shall be deemed to
23 have, waived any and all provisions, rights, and benefits conferred by any law of the United States or
24 any state or territory of the United States, or principle of common law, which governs or limits a
25 person’s release of Unknown Claims. Plaintiffs, for themselves and on behalf of Settlement Class
26 Members, and Flurry on its own behalf, shall be deemed to relinquish, to the fullest extent permitted
27 by law, any and all provisions, rights, and benefits conferred by any law of any state or territory of
28

1 the United States, or principle of common law, including Cal. Civ. Code § 1542 or any law which is
2 similar, comparable, or equivalent to Cal. Civ. Code § 1542, which provides that:

3 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT
4 THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR
5 SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
6 EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM
7 OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER
8 SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

9 Plaintiffs and Flurry acknowledge, and Settlement Class Members by operation of law shall be
10 deemed to have acknowledged, that they may discover facts in addition to or different from those
11 now known or believed to be true with respect to the Released Plaintiffs' Claims and released Flurry
12 claims, but that it is the intention of the Plaintiffs and Flurry, and by operation of law, Settlement
13 Class Members, to completely, fully, finally, and forever extinguish any and all Released Plaintiffs'
14 Claims and released Flurry claims, known or unknown, suspected or unsuspected, which now exist,
15 or heretofore existed, or may hereafter exist, and without regard to the subsequent discovery of
16 additional or different facts.

17 2. Settlement Class

18 (A) Plaintiffs will file an application, as part of the motion for preliminary approval of the
19 Settlement pursuant to Section 7, seeking the certification of the Settlement Class, as described herein,
20 pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure.

21 (B) The Parties' agreement as to certification of the Settlement Class is solely for purposes
22 of effectuating the Settlement and for no other purpose. Flurry retains all of its objections, arguments,
23 and defenses with respect to class certification and any other issue, and reserves all rights to contest
24 class certification and any other issue, if the Settlement set forth in this Settlement Agreement does
25 not result in the entry of a Final Approval Order and Final Judgment, if the Court's approval is
26 reversed or vacated on appeal, if this Settlement Agreement is terminated as provided herein, or if the
27 Settlement set forth in this Settlement Agreement otherwise fails to become effective. The Parties
28 acknowledge that there has been no stipulation to any classes or certification of any classes for any
purpose other than effectuating the Settlement, and that if the Settlement set forth in this Settlement

1 Agreement is not finally approved, if the Court's approval is reversed or vacated on appeal, if this
2 Settlement Agreement is terminated as provided herein, or if the Settlement set forth in this Settlement
3 Agreement otherwise fails to become effective, this agreement as to certification of the Settlement
4 Class becomes null and void *ab initio*, and this Settlement Agreement or any other settlement-related
5 statement may not be cited regarding certification of a class, or in support of an argument for
6 certifying any class for any purpose related to this Action or any other proceeding.

7 **3. Settlement Fund**

8 (A) Flurry agrees to pay and tender the Settlement Amount into the Escrow Account as
9 consideration for the releases and covenants set forth herein within twenty (20) Business Days of the
10 Execution Date of this Settlement Agreement and following Flurry's Counsel's receipt of a completed
11 W-9 tax form and appropriate wiring instructions for the Escrow Account. All interest earned by any
12 portion of the Settlement Amount paid into the Escrow Account shall be added to and become part of
13 the Settlement Fund. Upon occurrence of the Effective Date, no funds may be returned to Flurry
14 through a reversion or other means. The Parties expressly acknowledge and agree that the Settlement
15 Amount: (i) is the result of good-faith negotiations conducted by and between the Parties; (ii)
16 represents the sole consideration for the release of the Released Plaintiffs' Claims; and (iii) constitutes
17 fair and reasonable consideration for the release of any and all released claims.

18 (B) This is not a claims-made settlement. As of the Effective Date, Flurry and/or any other
19 Person funding the Settlement Amount on Flurry's behalf, shall not have any right to the return of the
20 Settlement Fund or any portion thereof for any reason.

21 (C) The Settlement Fund shall be used to pay for: (i) Notice and Settlement
22 Administration Costs incurred pursuant to this Settlement Agreement and/or approved by the Court,
23 (ii) any Taxes, (iii) any banking costs incurred to hold and invest the Settlement Fund, (iv) any
24 Attorneys' Fees and Expenses Award as approved by the Court, (v) Service Awards to Plaintiffs, (vi)
25 any other fees, costs, or awards approved by the Court, and (vii) payments to Authorized Claimants.
26 The Settlement Administrator will maintain control over the Settlement Fund, under the direction of
27 Class Counsel, and shall be responsible for all disbursements.

1 (D) Other than the payment of the Settlement Amount as set forth in this Section, Flurry
2 shall have no responsibility for any interest, costs, or other monetary payment to the Settlement Class,
3 including any Attorneys' Fees and Expenses Award, Service Award, Taxes, or Notice and Settlement
4 Administration Costs, except that Flurry shall be responsible for notice as required by 28 U.S.C. §
5 1715, as set forth in Section 8(K).

6 (E) No amounts may be withdrawn from the Settlement Fund unless: (i) authorized by this
7 Settlement Agreement, or (ii) as may be approved by the Court. Class Counsel may authorize the
8 periodic payment of Taxes, banking costs, and Notice and Settlement Administration Costs from the
9 Settlement Fund as such expenses are incurred without further order of the Court or approval of
10 Flurry. The Settlement Administrator shall provide Class Counsel with notice of any withdrawal or
11 payment to be made from the Settlement Fund prior to making such withdrawal or payment.

12 **4. Administration/Maintenance of the Settlement Fund**

13 (A) The Settlement Fund shall be maintained by the Settlement Administrator and Class
14 Counsel under supervision of the Court and shall be distributed solely at such times, in such manner,
15 and to such Persons as shall be directed by this Settlement Agreement and subsequent orders of the
16 Court, if any.

17 (B) After the Settlement Amount has been paid into the Escrow Account, the Parties intend
18 that the Settlement Fund be treated as a "qualified settlement fund" within the meaning of Treasury
19 Regulation § 1.468B. Class Counsel shall ensure that the Settlement Fund at all times complies with
20 Treasury Regulation § 1.468B in order to maintain its treatment as a qualified settlement fund. To
21 this end, Class Counsel shall ensure that the Settlement Fund is approved by the Court as a qualified
22 settlement fund and that any Settlement Administrator or other administrator of the Settlement Fund
23 complies with all requirements of Treasury Regulation § 1.468B-2. Any failure to ensure that the
24 Settlement Fund complies with Treasury Regulation § 1.468B-2, and the consequences thereof, shall
25 be the sole responsibility of Class Counsel. Class Counsel shall timely make, or cause to be made,
26 such elections as necessary or advisable to carry out the provisions of this Section, including the
27 "relation-back election" (as defined in Treas. Reg. § 1.468B-1) back to the earliest permitted date.
28

1 Such election shall be made in compliance with the procedures and requirements contained in such
2 regulations. It shall be the responsibility of Class Counsel to timely and properly prepare and deliver,
3 or cause to be prepared and delivered, the necessary documentation for signature by all necessary
4 parties, and thereafter take all such actions as may be necessary or appropriate to cause the appropriate
5 filing(s) to timely occur. Consistent with the foregoing:

6 (i) For the purposes of Section 468B of the Internal Revenue Code of
7 1986, as amended, and Treas. Reg. § 1.468B promulgated thereunder, the “administrator” shall be
8 Class Counsel or their successors, who shall timely and properly file, or cause to be filed, all federal,
9 state, or local tax returns and information returns (together, “Tax Returns”) necessary or advisable
10 with respect to the earnings on the funds deposited in the Escrow Account (including without
11 limitation the returns described in Treas. Reg. § 1.468B-2(k)). Such Tax Returns (as well as the
12 election described above) shall be consistent with this Section and in all events shall reflect that all
13 Taxes (including any estimated taxes, earnings, or penalties) on the income earned on the funds
14 deposited in the Escrow Account shall be paid out of such funds as provided for herein.

15 (ii) All Taxes shall be paid out of the Settlement Fund. In all events,
16 Flurry, Flurry Related Parties, and Flurry’s Counsel shall have no liability or responsibility
17 whatsoever for the Taxes or the filing of any Tax Return or other document with the Internal Revenue
18 Service or any other state or local taxing authority. In the event any Taxes are owed by Flurry on
19 any earnings on the funds on deposit in the Escrow Account, such amounts shall also be paid out of
20 the Settlement Fund.

21 (iii) Taxes with respect to the Settlement Amount and the Settlement Fund
22 shall be treated as, and considered to be, a cost of administration of the Settlement and shall be timely
23 paid, or caused to be paid, by Class Counsel out of the Settlement Fund without prior order from the
24 Court or approval by Flurry. Class Counsel and/or the Settlement Administrator shall be obligated
25 (notwithstanding anything herein to the contrary) to withhold from distribution to Authorized
26 Claimants any funds necessary to pay such amounts (as well as any amounts that may be required to
27 be withheld under Treas. Reg. § 1.468B-2(l)(2)). The Parties agree to cooperate with each other, and
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1 their tax attorneys and accountants to the extent reasonably necessary, to carry out the provisions of
2 this Section.

3 **5. Representations and Warranties**

4 (A) Flurry represents and warrants, as described in the sworn Declaration of Christopher
5 Stanford, attached hereto as Exhibit A, that the Settlement Amount reflects its total assets available
6 and are its only funds apart from its existing financial obligations.

7 (B) Flurry will provide Ambassador Bleich with access to Flurry's year-end balance
8 sheets and cash flow statements for the period beginning with the filing of the Action through April
9 2024, for the purpose of confirming that Flurry did not transfer or otherwise convey assets for the
10 purpose of hiding or changing its actual financial position.

11 (C) Up until the date the Court enters the Preliminary Approval Order, Plaintiffs shall be
12 entitled to withdraw from this Settlement Agreement and terminate the Settlement, pursuant to
13 Section 16(C), if Ambassador Bleich determines that: (i) there was a transfer or other conveyance of
14 assets for the purpose of hiding or changing Flurry's actual financial position in connection with its
15 dissolution; and/or (ii) the Chubb Insurance Policy does not in fact have a Twenty-Five Million US
16 Dollars (\$25,000,000 USD) self-insured retention provision, and/or has a specific term that creates
17 an exception to the requirement that the aforementioned self-insured retention be met in order to
18 access the insurance proceeds.

19 (D) Should withdrawal and termination occur, then, among other things as set forth in
20 Section 17, the Parties' request for certification of the Settlement Class will be withdrawn and deemed
21 to be of no force or effect for any purpose in this or any other proceeding. Any litigation that would
22 follow in this Action will revert to October 30, 2024 for the purposes of any dates or deadlines set by
23 the Court in this Action, and there will be no prejudice to Flurry with respect to its ability to proceed
24 with all motions and rights that it would have had as of October 30, 2024. In the event that Plaintiffs
25 terminate this Settlement Agreement pursuant to Section 5(C) above, Plaintiffs will return the funds
26 held in trust to Flurry pursuant to Section 17 below.

1 **6. Releases and Covenants Not to Sue**

2 (A) Upon the Effective Date, the Releasing Plaintiff Parties, and each of them, shall be
3 deemed to have, and by operation of the Final Approval Order and Final Judgment shall have, fully,
4 finally, and forever released, relinquished, and discharged all Released Plaintiffs' Claims against the
5 Released Flurry Parties. Further, upon the Effective Date, and to the fullest extent permitted by law,
6 each Releasing Plaintiff Party, including Plaintiffs, shall, either directly, indirectly, representatively,
7 or in any capacity, be permanently barred and enjoined from filing, commencing, prosecuting,
8 intervening in, or participating (as a class member or otherwise) in any lawsuit, action, or other
9 proceeding in any jurisdiction (other than participation in the Settlement as provided herein) against
10 any Released Flurry Party based on the Released Plaintiffs' Claims.

11 (B) Upon the Effective Date, Flurry and the Flurry Related Parties shall fully, finally, and
12 forever release, relinquish, and discharge from and covenant not to sue each and every Plaintiff and
13 each and every Settlement Class Member and their respective legal representatives, attorneys
14 (including Plaintiffs' Counsel), heirs, executors, administrators, beneficiaries, trustees, predecessors,
15 successors in interest, transferees and assignees, in their capacities as such, for any claims, including
16 Unknown Claims, arising out of or related to the institution, prosecution, or settlement of the claims
17 asserted in the Action, except for claims relating to the enforcement of the Settlement.

18 **7. Motion for Preliminary Approval**

19 (A) At a time mutually agreed upon by the Parties, Class Counsel, on behalf of Plaintiffs,
20 shall submit this Settlement Agreement to the Court and shall file a motion for entry of the Preliminary
21 Approval Order in the Action requesting:

- 22 (i.) certification of the Settlement Class for settlement purposes only, pursuant to
23 Section 2;
 - 24 (ii.) preliminary approval of the Settlement Agreement and Settlement, as set forth
25 herein;
 - 26 (iii.) appointment of Class Counsel as counsel for the Settlement Class;
 - 27 (iv.) appointment of the Plaintiffs as Settlement Class Representatives;
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1 (v.) appointment of a Settlement Administrator; and

2 (vi.) approval of Notice, the Notice Plan, and the Proof of Claim agreed upon by the

3 Parties in coordination with the Settlement Administrator.

4 The Preliminary Approval Order may also request that the Court delay the issuance of Notice for a
5 set period of time or until any additional settlement in this Action is preliminarily approved,
6 whichever is earlier, and delay the scheduling of a Fairness Hearing and briefing schedule for the
7 motion for final approval and entry of Final Judgment until after Notice is issued.

8 **8. Notice Plan**

9 (A) In the event that the Court preliminarily approves the Settlement and authorizes the
10 issuance of Notice, the Settlement Administrator shall, in accordance with Rule 23 of the Federal
11 Rules of Civil Procedure, provide Notice to all Settlement Class Members whose identities can be
12 determined after reasonable efforts. Flurry agrees to cooperate with Class Counsel and the Settlement
13 Administrator to develop and recommend a Notice Plan to provide Notice to Settlement Class
14 Members through reasonable and appropriate forms of notice, which may include email notice, digital
15 advertising, and banner advertisements, among other means. The Parties anticipate providing direct
16 notice of the Settlement to Settlement Class Members utilizing the email addresses in Flo Health,
17 Inc.'s data, subject to the Court's approval.

18 (B) Within fourteen (14) calendar days of the Execution Date, Plaintiffs agree to seek all
19 sources of relevant Settlement Class Member contact information, including without limitations, by
20 seeking production of such information from Flo.

21 (C) Pursuant to the Notice Plan, no later than the Notice Date, the Settlement
22 Administrator shall email Notice to all Settlement Class Members for whom email addresses are
23 available. Notice may also be sent by U.S. Mail to those Settlement Class Members whose email
24 addresses are invalid and for whom a mailing address is available. The Settlement Administrator may
25 also attempt to notify Settlement Class Members through targeted online notification options, among
26 other options.

27 (D) Pursuant to the Notice Plan, no later than the Notice Date, the Settlement
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1 Administrator will create a dedicated Settlement Website. The Settlement Administrator shall cause
2 the Complaint, the Notice, this Settlement Agreement, and other relevant Settlement and court
3 documents to be available on the Settlement Website. A link to the Settlement Website shall be
4 included in any emails sent to Settlement Class Members.

5 (E) The Settlement Website shall be maintained from the Notice Date until one hundred
6 eighty (180) calendar days after the Effective Date or when the Net Settlement Fund has been fully
7 distributed, whichever is later.

8 (F) The proposed notices shall collectively explain: (i) the general terms of the Settlement,
9 (ii) the general terms of the proposed relief to Settlement Class Members, (iii) the general terms of
10 the Fee and Expense Application, (iv) Settlement Class Members' rights to object and to request
11 exclusion from the Settlement Class, and/or to appear at the Fairness Hearing, and (v) the process for
12 submitting a Proof of Claim to obtain the proposed relief.

13 (G) The text of the proposed notices shall be agreed upon by the Parties before submission
14 to the Court for approval.

15 (H) The Notice Plan shall be subject to approval by the Court as meeting the requirements
16 of Rule 23(c) of the Federal Rules of Civil Procedure and all applicable requirements of due process
17 under the U.S. Constitution.

18 (I) If, after entry of the Preliminary Approval Order or any order authorizing the issuance
19 of Notice, either Party believes that supplemental notice in a form other than that approved is
20 warranted or any aspect of the Notice Plan should be amended, the Parties shall work together, with
21 the Settlement Administrator, in good faith to evaluate additional notice forms and take all reasonable
22 actions as may be necessary, subject to Court approval, if necessary.

23 (J) All fees, costs, and expenses associated with disseminating notice to any Settlement
24 Class Member will be considered Notice and Settlement Administration Costs and be paid from the
25 Settlement Fund. Plaintiffs and the Settlement Administrator shall mutually agree on the budget in
26 connection with Notice and Settlement Administration Costs, and shall use all reasonable efforts to
27 avoid unnecessary expenses.

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1 (K) Flurry shall bear the costs and responsibility for timely serving notice of the Settlement
2 to the extent required by the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1715. Flurry
3 shall also cause a copy of such CAFA notice and proof of service of any such notice to be provided
4 to Class Counsel.

5 **9. Administration of Claims**

6 (A) The Settlement Administrator, subject to such supervision and direction by the Court,
7 and/or Class Counsel as may be necessary, shall administer the Proofs of Claim submitted by
8 claimants. The Settlement Administrator shall oversee the distribution of payments to Authorized
9 Claimants that file timely and valid Proofs of Claim.

10 (B) In order to be considered timely and valid, a Proof of Claim must be electronically
11 submitted or postmarked by no later than the Claims Filing Deadline. The notices will specify the
12 Claims Filing Deadline and other relevant dates described herein. A Proof of Claim that is sent to an
13 address other than that designated by the Settlement Administrator, or that is not timely postmarked
14 or electronically submitted, shall be invalid.

15 (C) The Settlement Administrator shall have the right to audit each Proof of Claim for
16 validity, timeliness, completeness, and fraud. If, in the determination of the Settlement Administrator,
17 the claimant submits a timely but incomplete Proof of Claim, the Settlement Administrator shall give
18 the claimant notice of the deficiencies, and the claimant shall have twenty (20) calendar days from
19 the date of the written notice to cure the deficiencies (or a lesser period of time if the Proof of Claim
20 is untimely). If the defect is not cured within the required time period, then the Proof of Claim will
21 be deemed invalid.

22 (D) If at any time during the claims process, the Settlement Administrator has a reasonable
23 suspicion of fraud, the Settlement Administrator shall immediately notify Class Counsel of that fact
24 and the basis for its suspicion. The Settlement Administration and Class Counsel shall endeavor to
25 reach an agreed-upon solution to any suspected fraud and, if necessary and agreed upon by Class
26 Counsel and the Settlement Administrator, Class Counsel and/or the Settlement Administrator will
27 promptly seek assistance from the Court.
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1 (E) The Settlement Administrator’s determination of the validity or invalidity of Proofs of
2 Claim shall be binding, subject to Court review.

3 (F) **Distribution Plan**. Subject to the terms and conditions of this Settlement Agreement,
4 the Settlement Administrator shall mail or otherwise provide a payment, via check or electronic means
5 using an electronic payment platform (a “Claim Payment”), to each Authorized Claimant for their
6 *pro rata* share of the Net Settlement Fund, in accordance with the following distribution procedures
7 and those developed by the Settlement Administrator.

8 (i) The Settlement Administrator shall utilize the Net Settlement Fund to
9 make all Claim Payments.

10 (ii) The amount of each Claim Payment shall be calculated by dividing the
11 Net Settlement Fund by the number of Authorized Claimants that submit a valid Proof of Claim.
12 Authorized Claimants that provide reasonable documentation showing they are residents of
13 California will receive twice the *pro rata* share of Authorized Claimants who are residents of other
14 states.

15 (iii) All Claim Payments shall be void if not negotiated within sixty (60)
16 calendar days of their date of issue. Authorized Claimants will be informed that, if they do not cash
17 their Claim Payment before the void date, their Claim Payment will lapse and their entitlement to
18 recovery will be irrevocably forfeited and subject to redistribution to other Authorized Claimants.
19 Claim Payments that are not negotiated within sixty (60) calendar days of their date of issue shall
20 not be reissued, except if within the same sixty (60) calendar day period, the Authorized Claimant
21 requests a reissuance.

22 (iv) For any Claim Payment checks returned to the Settlement
23 Administrator as undeliverable (including, but not limited to, when the intended recipient is no longer
24 located at the address), the Settlement Administrator shall make reasonable efforts to find a valid
25 address and resend the Claim Payment check. If the Settlement Administrator finds a valid address
26 and resends the Claim Payment check, if the reissued check is not negotiated within sixty (60)
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1 calendar days of the issuance date, the check shall become void. The Settlement Administrator shall
2 make only one attempt to resend a Claim Payment check.

3 (v) Each Claim Payment issued via an electronic payment platform will
4 be processed according to the Authorized Claimant's electronic payment platform election. If the
5 Authorized Claimant fails to provide sufficient information to successfully transmit the Claim
6 Payment via the selected electronic payment platform and fails to provide updated information if
7 requested, a check will be sent to the Authorized Claimant.

8 (vi) Any balance that remains in the Net Settlement Fund from un-
9 negotiated Claim Payments, after accounting for and paying any additional Taxes or Notice and
10 Settlement Administration Costs that may have been or will be incurred, will be reallocated pro rata
11 among Authorized Claimants who negotiated their Claim Payments, so long as the reallocated pro
12 rata share to each eligible Authorized Claimant is at least \$5.00.

13 (vii) Once it is no longer feasible or economical to make further
14 distributions, any unclaimed balance that still remains in the Net Settlement Fund, after payment of
15 Notice and Settlement Administration Costs and Taxes, shall be contributed to a non-profit, non-
16 sectarian 501(c) organization to be mutually agreed upon by Class Counsel and approved by the
17 Court, or as ordered by the Court.

18 (G) The Settlement Administrator shall maintain reasonably detailed records of its
19 activities under this Agreement. The Settlement Administrator shall retain all such records as required
20 by law and under its normal business practices, and such records will be made available to Class
21 Counsel upon request.

22 (H) Personal information relating to or submitted by claimants pursuant to this Settlement
23 Agreement shall be deemed confidential and protected as such by the Settlement Administrator, the
24 Parties, and their respective counsel. The Settlement Administrator and Class Counsel shall not use
25 or disclose such records for any purpose other than effectuating the Settlement contemplated by this
26 Agreement.

1 (I) All Settlement Class Members who fail to submit timely and valid Proofs of Claim
2 within the time frames set forth herein, or such other period as may be ordered by the Court, or
3 otherwise allowed, shall be forever barred from receiving any payments or benefits pursuant to the
4 Settlement set forth herein, but will in all other respects be subject to, and bound by, the provisions
5 of the Settlement Agreement, the releases contained herein, and the Final Approval Order and Final
6 Judgment once the Effective Date is reached.

7 (J) No Person shall have any claim against the Settlement Administrator, Plaintiffs,
8 Released Flurry Parties, Plaintiffs' Counsel, and/or Flurry's Counsel based on distributions made
9 substantially in accordance with this Agreement and the Settlement contained herein, an approved
10 Distribution Plan for the Net Settlement Fund, or further orders of the Court.

11 (K) The Released Flurry Parties shall not have any responsibility for, interest in, or liability
12 whatsoever with respect to: (i) any act, omission, or determination of Class Counsel, the Settlement
13 Administrator, or any of their respective designees or agents, in connection with the administration
14 of the Settlement or otherwise; (ii) the management, investment, or distribution of the Settlement
15 Fund; (iii) the formulation, design, or terms of the Distribution Plan and the disbursement of the
16 Settlement Fund; (iv) any losses suffered by, or fluctuations in the value of the Settlement Fund; or
17 (v) the payment or withholding of any Taxes, expenses, and/or costs incurred in connection with the
18 taxation of the Settlement Fund or the filing of any returns. Flurry also shall have no obligation to
19 communicate with Settlement Class Members and others regarding amounts paid under the
20 Settlement.

21 **10. Opt-Out Procedures**

22 (A) Subject to Court approval, each person wishing to opt out of the Settlement Class shall
23 have the right to exclude themselves from the Settlement Class pursuant only to the procedure set
24 forth in this Agreement and the applicable Notice. Each person wishing to opt out of the Settlement
25 Class shall timely submit a Request for Exclusion to the address established by the Settlement
26 Administrator. The Request for Exclusion must clearly state the name of the Action, the name of the
27 person wishing to opt out of the Settlement Class, their current mailing address, phone number, and
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1 email address, their signature, and the words “Request for Exclusion” or a comparable statement that
2 the person intends to opt out of the Settlement Class. To be effective, the Request for Exclusion must
3 be postmarked or received no later than the Opt-Out Date. Any Request for Exclusion must also be
4 personally signed by the person requesting exclusion. So-called “mass” or “class” opt-outs shall not
5 be allowed.

6 (B) Unless otherwise allowed by the Court, a Request for Exclusion that does not comply
7 with all of the requirements set forth in the applicable Notice will be invalid. The Notice will state
8 that any person serving such an invalid or untimely request shall remain a Settlement Class Member
9 and shall be bound by the Agreement upon the Effective Date.

10 (C) Within three Business Days following the Opt-Out Deadline, the Settlement
11 Administrator and Class Counsel will provide Flurry’s Counsel with any Requests for Exclusion.
12 Class Counsel shall identify the Opt-Outs to the Court (if any) prior to the Fairness Hearing.

13 (D) All persons who submit valid and timely Requests for Exclusion (“Opt-Outs”) shall
14 not be permitted to object to the Settlement or the Fee and Expense Application or receive any benefits
15 of and/or be bound by the terms of this Settlement Agreement, the Final Approval Order, or the Final
16 Judgment. Flurry reserves its legal rights and defenses relating to any Opt-Outs including, but not
17 limited to, any defenses relating to whether any Opt-Out is a Settlement Class Member or has standing
18 to bring a claim against Flurry. All persons falling within the definition of the Settlement Class who
19 do not request to be excluded from the Settlement Class in the manner set forth above shall be bound
20 by the terms of this Settlement Agreement, Final Judgment, and Final Approval Order entered
21 thereon.

22 (E) The Parties and their respective counsel agree that they will make no effort to suggest,
23 solicit, facilitate or otherwise encourage potential Settlement Class Members to request exclusion.

24 **11. Objection Procedures**

25 (A) Any Settlement Class Member who has not excluded themselves and wishes to object
26 to the Settlement Agreement and/or the Fee and Expense Application shall submit a timely written
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1 objection by the Objection Deadline pursuant to the requirements set by the Court and explained in
2 the Notice.

3 (B) Such Objections must: (i) identify the Action; (ii) set forth the Settlement Class
4 Member's full name, current address, telephone number, and email address; (iii) contain the
5 Settlement Class Member's signature; (iv) contain proof or an attestation that the Settlement Class
6 Member is a member of the Settlement Class; (v) state whether the objection applies only to the
7 Settlement Class Member, to a specific subset of the Settlement Class, or to the entire Settlement
8 Class; (vi) set forth a statement of the legal and factual basis for the objection; (vii) provide copies of
9 any documents that the Settlement Class Member wishes to submit in support of his/her position;
10 (viii) identify all counsel representing the Settlement Class Member, if any; (ix) if submitted by a
11 representative, contain the signature of the Settlement Class Member's duly authorized attorney or
12 other duly authorized representative, along with documentation setting forth such representation; and
13 (x) contain a list, including case name, court, and docket number, of all other cases in which the
14 objecting Settlement Class Member and/or the objecting Settlement Class Member's counsel has filed
15 an objection to any proposed class action settlement in the past three (3) years.

16 (C) To be timely, an objection in the appropriate form must be filed with the Clerk of the
17 Court no later than the Objection Deadline or be mailed to the Clerk of Court and postmarked no later
18 than the Objection Deadline.

19 (D) Any Settlement Class Member who fails to comply with the requirements for objecting
20 shall waive and forfeit any and all rights he or she may have to appear separately and/or to object to
21 the Settlement Agreement and/or the Fee and Expense Application, but shall be bound by all the terms
22 of the Settlement Agreement and by all proceedings, orders, and judgments in the Action. Any
23 challenge to the Settlement Agreement, the final order approving this Settlement Agreement, or the
24 Final Judgment to be entered upon final approval shall be pursuant to appeal under the Federal Rules
25 of Appellate Procedure and not through a collateral attack.

1 **12. Payment of Attorneys’ Fees, Reimbursement of Litigation**
2 **Expenses, and Service Awards**

3 (A) Subject to Court approval, Plaintiffs and Plaintiffs’ Counsel shall be reimbursed and
4 paid solely out of the Settlement Fund for all fees and expenses including, but not limited to,
5 attorneys’ fees, and past, current, or future litigation expenses, and any Service Awards approved by
6 the Court. Flurry shall have no responsibility for any costs, fees, or expenses incurred for or by
7 Plaintiffs’ or Settlement Class Members’ respective attorneys, experts, advisors, agents, or
8 representatives.

9 (B) Prior to the Fairness Hearing, Class Counsel and Plaintiffs may apply, on behalf of
10 Plaintiffs’ Counsel, to the Court for an award from the Settlement Fund of attorneys’ fees, plus
11 interest, reimbursement from the Settlement Fund of Plaintiffs’ Counsel’s Litigation Expenses, plus
12 interest, and/or Service Awards (the “Fee and Expense Application”).

13 (C) The Released Flurry Parties shall have no responsibility for, and no liability with
14 respect to, any payment(s) for attorneys’ fees, Litigation Expenses, or Service Awards and/or to any
15 other Person who may assert some claim thereto, or any fee and expense award the Court may make
16 in the Action.

17 (D) The procedures for, and the allowance or disallowance by the Court of, any Fee and
18 Expense Application are not part of the Settlement set forth in this Agreement. Any order or
19 proceeding relating to a Fee and Expense Application, or the reversal or modification thereof, shall
20 not operate to terminate or cancel this Agreement, or affect or delay the finality of the Final Judgment
21 and the Settlement of the Action as set forth herein. No order of the Court or modification or reversal
22 on appeal of any order of the Court concerning any Fee and Expense Application shall constitute
23 grounds for termination of this Agreement.

24 (E) Upon the Court’s approval of an Attorneys’ Fees and Expenses Award, such approved
25 amounts shall be paid from the Escrow Account immediately upon entry of the Final Approval Order,
26 notwithstanding the existence of any timely filed objections thereto or to the Settlement, or potential
27 for appeal therefrom, or collateral attack on the Fee and Expense Application, the Settlement, or any
28 part thereof. Any payment of an Attorneys’ Fees and Expenses Award pursuant to this Section shall

1 be subject to Class Counsel’s obligation to make refunds or repayments to the Settlement Fund of any
2 paid amounts, plus accrued earnings at the same net rate as is earned by the Settlement Fund, if the
3 Settlement is terminated pursuant to the terms of this Agreement or fails to become effective for any
4 reason, or if, as a result of any appeal or further proceedings on remand or successful collateral attack,
5 the Attorneys’ Fees and Expenses Award is reduced or reversed by Final non-appealable court order.
6 Class Counsel shall make the appropriate refund or repayment in full no later than thirty (30) calendar
7 days after receiving notice of the termination of the Settlement pursuant to this Settlement Agreement,
8 notice from a court of appropriate jurisdiction of the disapproval of the Settlement by Final non-
9 appealable court order, or notice of any reduction or reversal of the Attorneys’ Fees and Expenses
10 Award by Final non-appealable court order. Class Counsel, as a condition of receiving any such
11 Attorneys’ Fees and Expenses Award, agree that they are subject to the jurisdiction of the Court for
12 purposes of enforcing the provisions of this Section.

13 **13. Motion for Final Approval and Entry of Final Judgment**

14 (A) After Notice is issued, and prior to the Fairness Hearing, Class Counsel, on behalf of
15 the Plaintiff(s), shall move for entry of the Final Approval Order and Final Judgment in this Action,
16 which shall, collectively:

17 (i.) finally certify solely for settlement purposes the Settlement Class;

18 (ii.) find that Notice constituted the best notice practicable under the circumstances
19 and complied in all respects with the requirements of Rule 23 of the Federal Rules of Civil
20 Procedure and due process;

21 (iii.) finally approve this Settlement Agreement and its terms as being a fair,
22 reasonable, and adequate settlement of the Settlement Class’s claims against Flurry under
23 Rule 23 of the Federal Rules of Civil Procedure;

24 (iv.) direct that the Action be dismissed as to the Released Flurry Parties with
25 prejudice and without costs, except as provided herein;

26 (v.) discharge and release the Released Plaintiffs’ Claims as to the Released Flurry
27 Parties;

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1 (vi.) discharge and release the Plaintiffs, the Settlement Class Members, and their
2 related Persons, from any claims and causes of action of every nature and description, whether
3 known or Unknown, whether arising under federal, state, common, or foreign law (including
4 Fed. R. Civ. P. 11) that arise out of or relate in any way to the institution, prosecution, or
5 settlement of the Action as against Flurry, except for claims relating to the enforcement of the
6 Settlement;

7 (vii.) permanently bar and enjoin all Settlement Class Members from filing,
8 commencing, prosecuting, intervening in, or participating (as class members or otherwise) in
9 any lawsuit, action, or other proceeding in any jurisdiction against any Released Flurry Party
10 based on the Released Plaintiffs' Claims;

11 (viii.) determine, pursuant to Fed. R. Civ. P. 54(b), that there is no just reason for
12 delay and directing that the Final Judgment shall be final and appealable;

13 (ix.) reserve the Court's continuing and exclusive jurisdiction over the Settlement
14 and this Agreement, including the administration and consummation of this Agreement; and

15 (x.) contain such other and further provisions consistent with the terms of this
16 Agreement to which Flurry and Plaintiffs expressly consent in writing.

17 (B) As provided in Section 12, Class Counsel will timely request, by separate motion, that
18 the Court approve its Fee and Expense Application. The Fee and Expense Application is separate and
19 apart from the Settlement between the Parties. If the Fee and Expense Application is not approved, in
20 whole or in part, it will have no effect on the finality of the Final Approval Order approving the
21 Settlement and the Final Judgment dismissing the Action with prejudice as to Flurry. There is no
22 agreement that Flurry will not oppose the Fee and Expense Application.

23 **14. Best Efforts to Effectuate This Settlement**

24 The Parties agree to cooperate with one another to the extent reasonably necessary to
25 effectuate and implement the terms and conditions of this Settlement Agreement and to exercise their
26 reasonable best efforts to accomplish the terms and conditions of this Settlement Agreement.
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1 **15. Occurrence of Effective Date**

2 Following the occurrence of the Effective Date, any and all interest or right of Flurry in or to
3 the Settlement Fund, if any, shall be absolutely and forever extinguished.

4 **16. Termination**

5 (A) If the Effective Date does not or cannot occur, then this Settlement Agreement shall
6 be terminated, subject to and in accordance with the subsections below, unless the Parties mutually
7 agree in writing to continue with this Agreement for a specified period of time.

8 (B) Flurry and Class Counsel (acting on behalf of Plaintiffs) shall have the right, but not
9 the obligation, each in their sole discretion, to terminate this Settlement Agreement by providing
10 written notice to the other Party’s Counsel, pursuant to Section 31, within fifteen (15) Business Days
11 of learning of any of the following conditions:

12 (i.) the Court declines to enter or modifies the Preliminary Approval Order
13 sought pursuant to Section 7 or the Final Approval Order sought pursuant to Section 13 in any
14 material respect;

15 (ii.) Flurry has not paid the Settlement Amount, pursuant to Section 3;

16 (iii.) the Court declines to approve the Settlement Agreement or any material part
17 of it;

18 (iv.) the Court declines to enter the Final Judgment in any material respect;

19 (v.) the Court enters an Alternative Judgment that materially differs from the
20 Final Judgment agreed by the Parties; or

21 (vi.) the Final Approval Order or the Final Judgment (or the Alternative
22 Judgment) is modified or reversed or vacated by any appellate court in any material respect.

23 Notwithstanding the above, the Parties agree to negotiate in good faith to amend the
24 Settlement Agreement to the extent the basis for termination can be resolved by the Parties.

25 (C) Up until the date the Court enters the Preliminary Approval Order, Plaintiffs shall have
26 the right, but not the obligation, in their sole discretion, to terminate this Settlement Agreement by
27 providing written notice to Flurry’s Counsel within fifteen (15) Business Days of the occurrence of
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1 the following condition:

2 (i.) Ambassador Bleich determines either that (i) there was a transfer or other
3 conveyance of assets for the purpose of hiding or changing Flurry's actual financial position
4 in connection with its dissolution; and/or (ii) the Chubb Insurance Policy does not in fact have
5 a Twenty-Five Million US Dollars (\$25,000,000 USD) self-insured retention provision,
6 and/or the Chubb Insurance Policy has a specific term that creates an exception to the
7 requirement that the aforementioned self-insured retention be met in order to access the
8 insurance proceeds.

9 (D) Any other dispute between Plaintiffs and Flurry concerning the interpretation or
10 application of this Section 16 shall be presented to the Court for binding determination upon the
11 application of Plaintiffs or Flurry.

12 **17. Effect of Termination**

13 In the event that the Effective Date does not occur or this Settlement Agreement should
14 terminate or be cancelled, or it otherwise fails to become effective for any reason, then:

15 (A) Within ten (10) Business Days after written notification of such event is sent by
16 Flurry's Counsel or Class Counsel to all Parties and the Settlement Administrator, the Settlement
17 Amount, plus all interest earned, and any amount required to be refunded by Class Counsel pursuant
18 to Section 12, minus Taxes paid, and Notice and Settlement Administration Costs incurred, will be
19 refunded, reimbursed, and repaid to Flurry by the Settlement Administrator and/or Class Counsel, as
20 applicable.

21 (B) The Settlement Administrator or its designee shall apply for any tax refund owed to
22 the Settlement Fund and pay the proceeds to Flurry, after deduction of any fees or expenses reasonably
23 incurred in connection with such application(s) for refund;

24 (C) The Parties shall be returned, to the maximum extent possible, to their respective
25 positions in the Action as of October 30, 2024, with all of their respective legal claims and defenses
26 preserved as they existed at that time; and

27 (D) Upon termination of this Settlement Agreement with respect to all Parties, then:
28

1 (i.) this Settlement Agreement shall be null and void and of no further effect, and
2 Flurry, Plaintiffs, and Settlement Class Members shall not be bound by its terms, other than
3 those set forth in Sections 5(D), 17, and 20;

4 (ii.) any and all releases hereunder shall be of no further force and effect;

5 (iii.) the Parties shall be deemed to have reverted *nunc pro tunc* to their respective
6 status in the Action as of October 30, 2024, and shall proceed in all respects as if this
7 Settlement Agreement had not been executed, without prejudice in any way from the
8 negotiation, fact, or terms of the Settlement, and with all of their respective legal claims,
9 objections, and defenses preserved as they existed on that date (including any objection to or
10 defense based on, among other things, a lack of personal jurisdiction); and

11 (iv.) any and all rulings, orders, or judgments entered, altered, amended, or
12 vacated by the Court in accordance with the terms of this Settlement Agreement shall be
13 deemed reverted *nunc pro tunc* to their respective status as of the Execution Date, and shall
14 proceed in all respects as if this Settlement Agreement had not been executed, without
15 prejudice in any way from the negotiation, fact, or terms of the Settlement.

16 **18. Confidentiality Protection and Public Statements**

17 (A) Plaintiffs, Plaintiffs' Counsel, Flurry's Counsel, and Flurry agree to maintain the
18 confidentiality of the terms of this Settlement prior to the filing of a Motion for Preliminary Approval.
19 During this period, the Settlement and its terms are and shall be treated as confidential and shall not
20 be disclosed, described, or characterized by the Parties to any other person, attorney, entity,
21 publication, or member of the media, except: (i) to their accountants, auditors, shareholder
22 representatives, insurers, purchasers or potential purchasers, attorneys, and/or as otherwise necessary
23 for valid and required business reasons; or (ii) as may be required by a validly served subpoena or
24 discovery request, court order, or governmental requirement, following notice to the other Party
25 sufficient to allow that other Party a reasonable opportunity to object to disclosure of no less than
26 ten (10) Business Days.

1 **19. Binding Effect**

2 This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors
3 and assigns of Flurry, the Released Flurry Parties, Plaintiffs, Plaintiffs’ Counsel, and Releasing
4 Plaintiff Parties.

5 **20. No Admissions**

6 Neither this Settlement Agreement, nor the Settlement contained herein, nor any act
7 performed or document executed pursuant to or in furtherance of the Settlement Agreement or the
8 Settlement: (i) is, or may be deemed to be, or may be used as an admission of, or evidence of, the
9 validity or lack thereof of any released claim, or of any wrongdoing or liability of any of the released
10 parties; or (ii) is, or may be deemed to be, or may be used as an admission of, or evidence of, any
11 fault or omission of any of the released parties in any civil, criminal, or administrative proceeding in
12 any court, administrative agency, or other tribunal. Any of the Released Flurry Parties may file this
13 Settlement Agreement and/or the Final Judgment in any action or proceeding in order to support a
14 claim or defense based on principles of res judicata, collateral estoppel, release, good faith settlement,
15 judgment bar, or reduction or any other theory of claim preclusion or issue preclusion or similar claim
16 or defense.

17 **21. Representations**

18 Plaintiffs represent and warrant that they are the sole owners of their claims released herein,
19 both individually and together, and that they have not assigned or transferred, or purported to assign
20 or transfer, to any person or entity, any of the claims released.

21 **22. Integrated Agreement**

22 This Settlement Agreement, including any exhibits hereto and agreements referenced herein,
23 contains the entire, complete, and integrated statement of each and every term and provision agreed
24 to by and among the Parties and is not subject to any condition not provided for or referenced herein.
25 This Settlement Agreement supersedes all prior or contemporaneous discussions, agreements, and
26 understandings among the Parties to this Settlement Agreement with respect hereto. This Settlement
27 Agreement may not be modified in any respect except by a writing that is executed by all the Parties
28

1 hereto.

2 **23. Headings**

3 The headings used in this Settlement Agreement are for the convenience of the reader only
4 and shall not have any substantive effect on the meaning and/or interpretation of this Settlement
5 Agreement.

6 **24. No Party is the Drafter**

7 None of the Parties shall be considered to be the drafter of this Settlement Agreement or any
8 provision herein for the purpose of any statute, case law, or rule of interpretation or construction that
9 might cause any provision to be construed against the drafter. This Settlement Agreement shall not
10 be construed more strictly against one Party than another merely by virtue of the fact that it, or any
11 part of it, may have been prepared by counsel for one of the Parties, it being recognized that this
12 Settlement Agreement is the result of arm's length negotiations and that all Parties have contributed
13 substantially and materially to the preparation of the Agreement.

14 **25. Choice of Law**

15 All provisions of this Settlement Agreement and its exhibits shall be governed by and
16 interpreted according to the substantive laws of the State of California, without regard to its choice of
17 law or conflict of laws principles.

18 **26. Costs and Fees**

19 The Parties agree to bear their own costs and attorneys' fees and expenses not otherwise
20 awarded in accordance with this Settlement Agreement.

21 **27. Execution in Counterparts**

22 This Settlement Agreement may be executed in one or more counterparts. Facsimile and
23 scanned/PDF signatures shall be considered valid signatures. All executed counterparts shall be
24 deemed to be one and the same instrument. There shall be no agreement until the fully signed
25 counterparts have been exchanged and delivered to each of the Parties.

26 **28. Submission to and Retention of Jurisdiction**

27 The Parties, Released Flurry Parties, and the Releasing Plaintiff Parties irrevocably submit, to
28

1 the fullest extent permitted by law, to the exclusive jurisdiction of the United States District Court for
2 the Northern District of California, if federal jurisdiction exists, otherwise the Superior Court for the
3 County of Santa Clara, California, solely for any suit, action, proceeding, or dispute arising out of or
4 relating to this Settlement Agreement, or the exhibits hereto. For the purpose of such suit, action, or
5 proceeding, to the fullest extent permitted by law, the Parties, Released Flurry Parties, and the
6 Releasing Plaintiff Parties irrevocably waive and agree not to assert, by way of motion, as a defense,
7 or otherwise, any claim or objection that they are not subject to the jurisdiction of such Court, or that
8 such Court is, in any way, an improper venue or an inconvenient forum or that the Court lacked power
9 to approve this Settlement Agreement or enter any of the orders contemplated hereby.

10 **29. Severability**

11 In the event that one or more of the provisions contained in this Settlement Agreement shall
12 for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality,
13 or unenforceability shall not affect the other provisions of the Settlement Agreement, which shall
14 remain in full force and effect as though the invalid, illegal, or unenforceable provision(s) had never
15 been a part of this Settlement Agreement, as long as the benefits of this Settlement Agreement to
16 Flurry or the Settlement Class Members are not materially altered, positively or negatively, as a result
17 of the invalid, illegal, or unenforceable provision(s).

18 **30. Waiver of Breach**

19 No breach of any provision of this Agreement can be waived except in a writing signed by the
20 non-breaching Parties. The waiver by any Party of any breach of this Settlement Agreement shall not
21 be deemed a waiver of such breach by any other Party or a waiver by any Party of any other prior or
22 subsequent breach of this Settlement Agreement.

23 **31. Notices**

24 All notices and other communications under this Settlement Agreement shall be sent to the
25 Parties to this Settlement Agreement by registered mail, return receipt requested, or by email, as
26 follows:

- 27 (A) For Flurry:
28 Ann Marie Mortimer

1 Jason J. Kim
2 Hunton Andrews Kurth LLP
3 550 S. Hope St. 2000
4 Los Angeles, CA 90071
5 amortimer@huntonAK.com
6 kimj@huntonAK.com

7 with a cc to: legalnotices@yahooinc.com

8 (B) For Plaintiffs:

9 Christian Levis
10 Amanda Fiorilla
11 Lowey Dannenberg, P.C.
12 44 South Broadway, Suite 1100
13 White Plains, NY 10601
14 clevis@lowey.com
15 afiorilla@lowey.com

16 Carol C. Villegas
17 Michael P. Canty
18 Danielle Izzo
19 Labaton Keller Sucharow LLP
20 140 Broadway
21 New York, NY 1000
22 cvillegas@labaton.com
23 mcanty@labaton.com
24 dizzo@labaton.com

25 Diana J. Zinser
26 Jeffrey L. Kodroff
27 Spector Roseman & Kodroff, P.C.
28 2001 Market Street, Suite 3420
Philadelphia, PA 19103
dzinser@srkattorneys.com
jkodroff@srkattorneys.com

32. Authority

In executing this Settlement Agreement, Class Counsel represent and warrant that they have been fully authorized to execute this Settlement Agreement on behalf of Plaintiffs and the Settlement Class (subject to final approval by the Court after notice to all Settlement Class Members), and that all actions necessary for the execution of this Settlement Agreement have been taken. Flurry represents and warrants that its undersigned counsel is fully empowered to execute the Settlement

1 Agreement on behalf of Flurry and that all actions necessary for the execution of this Settlement
2 Agreement have been taken.

3
4 **IN WITNESS WHEREOF**, the Parties hereto have caused the Settlement Agreement to
5 be executed, by their duly authorized attorneys and/or corporate representatives.

6 Dated: March 20, 2025


Christian Levis (*pro hac vice*)
Amanda Fiorilla (*pro hac vice*)
LOWEY DANNENBERG, P.C.
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Fax: (914) 997-0035
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afiorilla@lowey.com

*Interim Co-Lead Counsel
for Plaintiffs and the Proposed Class*

14 Dated: March 20, 2025


Carol C. Villegas (*pro hac vice*)
Michael P. Canty (*pro hac vice*)
Danielle Izzo (*pro hac vice*)
Gloria J. Medina (*pro hac vice*)
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gmedina@labaton.com

*Interim Co-Lead Counsel
for Plaintiffs and the Proposed Class*

24 Dated: March 20, 2025



Diana J. Zinser (*pro hac vice*)
Jeffrey L. Kodroff (*pro hac vice*)
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Tel: (215) 496-0300

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Fax: (215) 496-6611
dzinser@srkattorneys.com
jkodroff@srkattorneys.com

*Interim Co-Lead Counsel
for Plaintiffs and the Proposed Class*

Dated: March 18, 2025


Ann Marie Mortimer
Jason J. Kim
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amortimer@huntonAK.com
kimj@huntonAK.com

Counsel for Flurry LLC

EXHIBIT A

1 Ann Marie Mortimer (State Bar No. 169077)

2 amortimer@HuntonAK.com

Jason J. Kim (State Bar No. 221476)

3 kimj@HuntonAK.com

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Los Angeles, California 90071-2627

5 Telephone: (213) 532-2000

Facsimile: (213) 532-2020

6 Samuel A. Danon (admitted *pro hac vice*)

7 sdanon@hunton.com

John J. Delionado (admitted *pro hac vice*)

8 jdelionado@huntonak.com

HUNTON ANDREWS KURTH LLP

9 Wells Fargo Center

333 SE 2nd Avenue, Suite 2400

10 Miami, Florida 33131

Telephone: (305) 810-2500

11 Facsimile: (305) 810-2460

12 Attorneys for Defendant

FLURRY LLC

13 (formerly known as "FLURRY, INC.")

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

16 ERICA FRASCO, individually and on behalf
17 of all others similarly situated,

18 Plaintiff,

19 v.

20 FLO HEALTH, INC., GOOGLE, LLC,
21 FACEBOOK, INC., APPSFLYER, INC., and
FLURRY, INC.,

22 Defendants.

CASE NO.: 3:21-cv-00757-JD

**DECLARATION OF
CHRISTOPHER STANFORD**

1 I, Christopher Stanford, declare as follows:

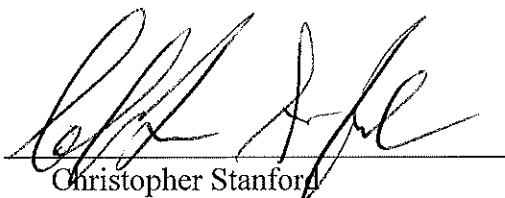
2 1. I am the Vice President, Controller and Assistant Treasurer of Flurry LLC (“Flurry”),
3 a Defendant in the above-captioned lawsuit. I have personal knowledge of the matters set forth
4 herein, and if called upon to do so, could and would testify competently to the following statements:

5 2. Flurry currently has total assets of approximately Three Million and Five Hundred
6 Thousand US Dollars (\$3,500,000 USD), and these are its only funds apart from existing financial
7 obligations.

8 3. From June 7, 2021 to October 30, 2024, during the pendency of this litigation and up
9 to and including its dissolution, Flurry did not transfer or otherwise convey assets for the purpose of
10 hiding or changing its actual financial position.

11 4. The only primary insurance policy applicable to Flurry regarding the claims brought
12 by Plaintiffs is a liability policy with a Twenty-Five Million US Dollars (\$25,000,000 USD) self-
13 insured retention provision issued by Chubb Insurance and held by Verizon Communications Inc. as
14 policy holder. There are no other applicable primary liability policies, and any excess or other
15 umbrella-type insurance policies that do or may exist would only be triggered upon exhaustion of the
16 Chubb Insurance policy.

17
18 I declare under penalty of perjury under the laws of the United States of America that the
19 foregoing is true and correct. Executed on March 20, 2025.

20
21
22 By: 
Christopher Stanford