

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

**KENNETH KOSKOSKY, VICTORIA
WITHERBY, and SANDRA HOOVER**

on behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

DAVITA, INC.

Defendant.

Civil Action No. CACE24009252

**ORDER PRELIMINARILY APPROVING SETTLEMENT,
CERTIFYING SETTLEMENT CLASS, AND
DIRECTING NOTICE TO SETTLEMENT CLASS**

This matter came before the Court on Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement ("Motion"). Upon careful consideration of the Motion, and being otherwise advised in the premises, the Court finds and determines as follows:

Plaintiffs Kenneth Koskosky, Victoria Witherby, and Sandra Hoover brought their class action against Defendant Davita, Inc. ("Davita"), in June of 2024 for damages allegedly suffered by Plaintiffs and the Class in connection with Defendant's alleged implementation and use of third-party analytics tools on websites, patient portals, and mobile applications owned, operated, or managed by Defendant or its subsidiaries or affiliates. Plaintiffs allege that Defendant's use of these tools disclosed their web usage data, containing personally identifiable information and protected health information, to

Facebook, Google, and other third-parties purportedly resulting in the invasion of Plaintiffs' and Settlement Class Members' privacy (defined below as the "Website Usage Disclosure").

The parties, through their counsel, have entered into a Settlement Agreement and Release following good faith, arm's-length negotiations. The parties have agreed to settle this action, pursuant to the terms of the Settlement Agreement, and subject to the approval and determination of the Court as to the fairness, reasonableness, and adequacy of the settlement which, if approved, will result in dismissal of this action with prejudice.

Having reviewed the Settlement Agreement and Release, (together, the "Settlement Agreement" or "Settlement"), and all prior proceedings herein, and for good cause shown, it is hereby ordered that Plaintiffs' Motion for Preliminary Approval is granted as set forth herein.[\[1\]](#)

I. CLASS CERTIFICATION FOR SETTLEMENT PURPOSES ONLY

For settlement purposes only and pursuant to Florida Rules of Civil Procedure 1.220(a), the Court provisionally certifies a class in this matter defined as follows:

All U.S. persons who are, or have been, patients of Defendant who were treated at Defendant's U.S. clinics and who visited any websites, patient portals, and/or mobile applications owned, operated, or managed directly or indirectly by Defendant or its subsidiaries or affiliates at least once between November 20, 2017 and up to and including September 21, 2021.

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

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

The Court provisionally finds, for settlement purposes only, that: (a) the Settlement Class is so numerous that joinder of all Settlement Class Members would be impracticable; (b) there are issues of law and fact common to the Settlement Class; (c) the claims of the Settlement Class Representatives are typical of and arise from the same operative facts and seek similar relief as the claims of the Settlement Class Members; (d) the Settlement Class Representatives and Settlement Class Counsel will fairly and adequately protect the interests of the Settlement Class as the Settlement Class Representatives have no interest antagonistic to or in conflict with the Settlement Class and have retained experienced and competent counsel to prosecute this matter on behalf of the Settlement Class; (e) questions of law or fact common to Settlement Class Members predominate over any questions affecting only individual members; and (f) a class action and class settlement is superior to other methods available for a fair and efficient resolution of this case.

II. SETTLEMENT CLASS REPRESENTATIVES AND SETTLEMENT CLASS COUNSEL

Kenneth Koskosky, Victoria Witherby, and Sandra Hoover are hereby provisionally designated and appointed as the Settlement Class Representatives. The Court provisionally finds that the Settlement Class Representatives are similarly situated to absent Settlement Class Members, and are therefore typical of the Class, and that they will be adequate Settlement Class Representatives.

The Court finds that Milberg Coleman Bryson Phillips Grossman, PLLC, Cohen & Malad, LLP are experienced and adequate counsel and are provisionally designated as Settlement Class Counsel.

III. PRELIMINARY SETTLEMENT APPROVAL

Upon preliminary review, the Court finds that the Proposed Settlement is fair, reasonable, and adequate to warrant providing notice of the Settlement to the Settlement Class and accordingly is preliminarily approved.

IV. JURISDICTION

The Court finds that it has subject matter jurisdiction and personal jurisdiction over the Parties. Additionally, venue is proper in this Court.

V. FINAL APPROVAL HEARING

A Final Approval Hearing shall be held on **December 16, 2024 at 8:45 a.m.** in via Zoom <https://17thflcourts.zoom.us/j/64732402> Meeting ID: 674-324-402 of the Circuit Court for the Seventeenth Judicial Circuit in and for Broward County, Florida, located at 201 S.E. 6th Street, Fort Lauderdale, FL 33301 to determine, among other things, whether: (i) this matter should be finally certified as a class action for settlement purposes pursuant to Florida Rule of Civil Procedure 1.220(d)(1), (2) and (3); (ii) the Settlement should be finally approved as fair, reasonable, and adequate pursuant to Florida Rule of Civil Procedure 1.220(e); (iii) the action should be dismissed with prejudice pursuant to the terms of the Settlement Agreement; (iv) Settlement Class Members should be bound by the releases set forth in the Settlement Agreement; (v) the application of Settlement Class Counsel for an award of attorneys' fees, costs and

expenses (the “Fee Request”) should be approved; and (vi) the application of the Settlement Class Representatives for a Service Award (the “Service Award Request”) should be approved.

Plaintiffs’ motion for final approval of the Settlement shall be filed with the Court by 14 days prior to Final Approval Hearing. Plaintiffs’ Service Awards Request and Fee Request shall be filed with the Court by 14 days prior to deadline to opt-out/object. By no later than 7 days prior to Final Approval Hearing, the parties shall file responses, if any, to any objections, and any replies in support of final approval of the Settlement and/or the Service Award Request and Fee Request.

VI. ADMINISTRATION

The Court appoints Kroll Settlement Administration, LLC as the Notice Specialist and Claims Administrator, with responsibility for class notice and claims administration. Defendant shall pay all costs and expenses associated with providing notice to Settlement Class Members, including but not limited to, the Settlement Administrator’s fees and costs. These payments shall be made separate and apart from the Settlement amounts.

VII. NOTICE TO THE CLASS

The Proposed Notice Program set forth in the Settlement Agreement, including the Postcard Notice and Long Form Notice, satisfies the requirements of Florida Rule of Civil Procedure 1.220(d)(2), provides the best notice practicable under the circumstances, and is hereby approved. Non-material modifications to these Exhibits may be made without further order of the Court. The Notice Specialist and Claims Administrator is directed to carry out the Notice program in conformance with the Settlement Agreement.

By sixty (60) days after entry of this Order, the Notice Specialist and Claims Administrator shall commence the Notice Program, which shall be completed in the manner set forth in the Settlement Agreement.

VIII. FINDINGS CONCERNING NOTICE

The Court finds that the form, content, and method of giving notice to the Settlement Class as described in Section VII of this Order and the Settlement Agreement (including the exhibits thereto): (a) will constitute the best practicable notice to the Settlement Class; (b) are reasonably calculated to apprise Settlement Class Members of the pendency of the action, the terms of the proposed settlement, including but not limited to their rights to object to or exclude themselves from the proposed settlement and other rights under the terms of the Settlement Agreement; (c) are reasonable and constitute due, adequate, and sufficient notice to all Class Members and other persons entitled to receive notice; and (d) meet all applicable requirements of law, including the Florida Rules of Civil Procedure 1.220(d)(2) and (3), and the Due Process Clause(s) of the Florida Constitution.

The Court further finds that the Notice is written in plain language, uses simple terminology, and is designed to be readily understandable by Class Members.

IX. EXCLUSION FROM CLASS

Any Settlement Class Member who wishes to be excluded from the Settlement Class shall individually sign and timely submit written notice of such intent (a “Request for Exclusion”) to the designated Post Office box established by the Settlement Administrator. The written notice must (i) identify the case name and number of this lawsuit ([New FL Plaintiff], Jane Doe I and Jane Doe II v. DaVita, Inc., Case No.

CACE24009252); (ii) state the Settlement Class Member's full name, address, and telephone number; (iii) contain the Settlement Class Member's personal and original signature; (iv) state unequivocally the Settlement Class Member's intent to be excluded from the Settlement Class, and; (v) request exclusion only for that one Settlement Class Member whose personal and original signature appears on the request. To be effective, written notice must be postmarked no later than sixty (60) Days after the Notice Date (the "Opt-Out Date").

The Claims Administrator shall provide the Parties with copies of all completed opt-out notifications, and a final list of all who have timely and validly excluded themselves from the Settlement Class. Any Settlement Class Member who does not timely and validly exclude herself or himself from the Settlement shall be bound by the terms of the Settlement. If Final Judgment is entered, any Settlement Class Member who has not submitted a timely, valid written notice of exclusion from the Settlement Class shall be bound by all proceedings, orders, and judgments in this matter, including but not limited to the Release and the dismissal with prejudice set forth in the Final Judgment, including Settlement Class Members who have previously initiated or who subsequently initiate any litigation against any or all of the Released Parties relating to the claims and transactions released in the Settlement Agreement. All Class Members who submit valid and timely notices of exclusion from the Settlement Class shall not be entitled to receive any benefits of the Settlement.

X. OBJECTIONS AND APPEARANCES

A Settlement Class Member who does not exclude himself or herself and who complies with the requirements of the following paragraphs may object to the Settlement,

the Service Award Request, or the Fee Request, and must do so no later than 60 days after Notice commences.

Each Objection must (i) include the case name and number of the lawsuit (*[New FL Plaintiff]*, *Jane Doe I and Jane Doe II v. DaVita, Inc.*, Case No. CACE24009252), (ii) set forth the Settlement Class Member's full name, current address, telephone number, and email address; (iii) contain the Settlement Class Member's personal and original signature; (iv) contain proof that the Settlement Class Member is a member of the Settlement Class, including an attestation under the laws of the United States that the objector is, or has been, a patient of Defendant and visited any websites, patient portals, and/or mobile applications owned, operated, or managed directly or indirectly by Defendant or its subsidiaries or affiliates at least once between November 20, 2017 and September 21, 2023; (v) state that the Settlement Class Member objects to the Settlement, in whole or in part; (vi) set forth a statement of the legal and factual basis for the Objection; (vii) provide copies of any documents that the Settlement Class Member wishes to submit in support of his/her position; (viii) identify any attorney representing the Settlement Class Member with respect to, or who provided assistance to the Settlement Class Member in drafting, his or her Objection, if any; (ix) contain the signature, name, address, telephone number, and email address of the Settlement Class Member's attorney, if any; (x) contain a list, including case name, court, and docket number, of all other cases in which the objector and/or the objector's counsel has filed an objection to any proposed class action settlement In the past three (3) years; (xi) state whether the objection applies only to the Settlement Class Member, to a specific subset of the Settlement Class, or to the entire Settlement Class, and (xii) state whether the

objecting Settlement Class Member intends to appear at the Final Approval Hearing, and if so, whether personally or through an attorney.

Objections must be filed with the Court no later than sixty (60) Days after the Notice Date (the “Objection Deadline”).

Any Settlement Class Member who fails to substantially comply with the provisions of this Paragraph may waive and forfeit any and all rights he or she may have to object, and shall be bound by all the terms of the Settlement Agreement, this Order, and by all proceedings, orders, and judgments in this matter, including, but not limited to, the Release in the Settlement Agreement if Final Judgment is entered. The Court retains the right to allow objections in the interest of justice.

Any Settlement Class Member, including a Settlement Class Member who has not opted-out and files and serves a written objection, as described above, may appear at the Final Approval Hearing, either in person or through counsel hired at the Settlement Class Member’s expense, to object to or comment on the fairness, reasonableness, or adequacy of the Settlement, the Service Award Request, or the Fee Request.

If Final Judgment is entered, any Settlement Class Member who fails to object in the manner prescribed herein shall be deemed to have waived his or her objections and shall be forever barred from making any such objections in this action or in any other proceeding or from challenging or opposing, or seeking to reverse, vacate, or modify any approval of the Settlement Agreement, including any final judgment and orders entered thereon, the Service Award Request, or the Fee Request.

XI. CLAIMS PROCESS AND DISTRIBUTION AND ALLOCATION PLAN

The Settlement Class Representatives and Defendant have created a process for

assessing and determining the validity and value of claims and a payment methodology to Settlement Class Members who submit a timely, valid claim form. The Court preliminarily approves the settlement benefits to the class and plan for remuneration described in the Settlement Agreement and directs that the Claims Administrator effectuate the distribution of settlement consideration according to the terms of the Settlement Agreement, should Settlement be finally approved.

If Final Judgment is entered, all Settlement Class Members who qualify for a benefit under the Settlement but fail to submit a claim in accordance with the requirements and procedures specified in the Notice and the enrollment form will be forever barred from receiving any such benefit, but will in all other respects be subject to and bound by the provisions in the Settlement Agreement, the Release included in the Settlement Agreement, and the Final Judgment.

XII. TERMINATION OF THE SETTLEMENT

This Order shall become null and void and shall be without prejudice to the rights of the Parties, all of whom shall be restored to their respective positions existing immediately before this Court entered this Order, if the Settlement is not finally approved by the Court or is terminated in accordance with the Settlement Agreement. In such event, the Settlement and Settlement Agreement shall become null and void and be of no further force and effect, and neither the Settlement Agreement nor the Court's orders, including this Order, relating to the Settlement shall be used or referred to for any purpose whatsoever.

XIII. USE OF ORDER

This Order shall be of no continuing force or effect if Final Judgment is not

entered or there is no Effective Date (as defined in the Settlement Agreement). In no event, shall this Order be construed, regarded, or used as an admission, concession, or declaration by or against Defendant of any fault, wrongdoing, breach, or liability in connection with the Data Incident, indication that there was any misuse of information resulting from the Data Incident, or the certifiability of any class. Nor shall this Order be construed or used as an admission, concession, or declaration by or against the Settlement Class Representatives or any other Settlement Class member that his or her claims lack merit or that the relief requested is inappropriate, improper, unavailable, or as a waiver by any Party of any defense or claims he, she, or it may have in this litigation or in any other lawsuit.

XIV. STAY OF PROCEEDINGS

Except as necessary to effectuate this Order, all proceedings and deadlines in this matter are stayed and suspended pending the Final Approval Hearing and issuance of the Final Judgment, or until further order of this Court.

XV. CONTINUANCE OF HEARING

The Court reserves the right to adjourn or continue the Final Approval Hearing and related deadlines without further written notice to the Class. If the Court alters any of those dates or times, the revised dates and times shall be posted on the website maintained by the Claims Administrator.

XVI. SUMMARY OF DEADLINES

The preliminarily approved Settlement shall be administered according to its terms pending the Final Approval Hearing. Deadlines arising under the Settlement Agreement and this Order include but are not limited to:

1. **Notice Deadline: 60 days after entry of this Order**
2. **Motion for Final Approval: 14 days prior to Final Approval Hearing**
3. **Motion for Service Award, Attorneys' Fees, Costs, and Expenses: 14 days prior to deadline to opt-out/object**
4. **Opt-Out and Objection Deadlines: 60 days after Notice Date**
5. **Claims Deadline: 90 days after Notice Date**
6. **Replies (if any) in Support of Final Approval, Service Awards, and Fee Requests: 7 days prior to Final Approval Hearing**
7. **Final Approval Hearing: (at least 100 days after Notice Date): December 16, 2024 at 8:45 a.m.**

The dates set in this Order should be included as appropriate in the Notices to the Class.

[1] Unless otherwise indicated, capitalized terms used herein have the same meaning as defined in the Settlement Agreement and Release, which was filed with Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement.

DONE AND ORDERED in Chambers at Broward County, Florida on 7th day of July, 2024.


CACE24009252 07-07-2024 1:13 PM

CACE24009252 07-07-2024 1:13 PM
Hon. Keathan Frink
CIRCUIT COURT JUDGE
Electronically Signed by Keathan Frink

Copies Furnished To:

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