

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

CARLA TRACY, DARRYL
BOWSKY, and DEBORAH
HARRINGTON, individually and
*on behalf of all others similarly
situated,*

Plaintiffs,

v.

ELEKTA, INC., and
NORTHWESTERN MEMORIAL
HEALTHCARE,

Defendants.

Judge Steven D. Grimberg

Case No. 1:21-cv-02851

**PLAINTIFFS' UNOPPOSED MOTION AND MEMORANDUM OF LAW IN
SUPPORT OF FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

TABLE OF CONTENTS

TABLE OF AUTHORITIES	iv
I. INTRODUCTION	1
II. SUMMARY OF SETTLEMENT	3
A. The Settlement Classes.....	3
B. The Settlement Benefits	4
1. Settlement Payments.	4
2. Illinois GIPA Claims.....	5
3. Pro Rata Cash Payment.....	6
4. <i>Cy Pres</i> Recipient.....	6
5. Business Practice Changes.....	6
6. Release.	7
C. The Notice and Claims Process.....	7
1. Notice.	7
2. Payment of Administrative and Notice Costs.....	8
3. Opt-Out and Objection Procedures.	8
4. Fees and Costs.....	9
III. THE SETTLEMENT WARRANTS FINAL APPROVAL	9
A. Legal Standard for Final Approval of Class Action Settlement.....	10
B. Argument	11
1. The <i>Bennett</i> Factors Weigh in Favor of Final Approval.....	11
a. The Benefits of Settlement Outweigh the Risk of Future Litigation.....	11

b.	The Settlement Compares Favorably to Other Common Fund Data Breach Settlements.....	12
c.	Continued Litigation Would be Time Consuming and Expensive	13
d.	The Class Overwhelming Supports the Settlement	14
e.	Plaintiffs had Sufficient Information to Thoroughly Evaluate the Merits of the Case and Negotiate a Favorable Settlement	15
2.	The Rule 23(e) Factors Support Final Approval	15
a.	The Class was Adequately Represented	15
b.	The Settlement was Negotiated at Arm’s Length.....	17
c.	The Settlement Provides Class Members with Significant Cash Benefits	17
d.	The Complexity, Expense, and Risk of Future Litigation	18
e.	The Terms Relating to Attorneys’ Fees are Reasonable	19
f.	No Other Agreements Exists under Rule 23(e)(3)	20
g.	Class Members Are Treated Equally Relative to Each Other.....	20
IV.	THE COURT SHOULD CERTIFY THE SETTLEMENT CLASS	21
A.	The Rule 23(a) Requirements are Satisfied	21
B.	The Rule 23(b)(3) Requirements are Satisfied	22
	CONCLUSION.....	25
	CERTIFICATE OF COMPLIANCE	27
	CERTIFICATE OF SERVICE	28

TABLE OF AUTHORITIES

Cases

Access Now, Inc. v. Claire’s Stores, Inc.,
 No. 00-14017, 2022 WL 1162422 (S.D. Fla. May 7, 2002).....14

Alghadeer Bakery & Marker, Inc. v. Worldpay US, Inc.,
 No. 1:18-cv-02688-MLB, 2020 WL 10935986 (N.D. Ga. June 3, 2020)19

Amchem Prods., Inc. v. Windsor,
 521 U.S. 591 (1997)..... 23, 25

Ass’n for Disabled Ams., Inc. v. Amoco Oil Co.,
 211 F.R.D. 457 (S.D. Fla. 2002).....11

Bennett v. Behring Corp.,
 737 F.2d 982 (11th Cir. 1984)10

Burhl v. Price Waterhousecoopers Int’l.,
 257 F.R.D. 684 (S.D. Fla. 2008).....22

Cabot E. Broward 2 LLC v. Cabot,
 No. 16-61217-CIV, 2018 WL 5905415 (S.D. Fla. Nov. 9, 2018).....20

Columbus Drywall & Insulation, Inc. v. Masco Corp.,
 258 F.R.D. 545 (N.D. Ga. 2007).....15

Cotter v. Checkers Drive-In Rests., Inc.,
 No. 8:19-cv-1386, 2021 WL 3773414 (M.D. Fla. Aug. 25, 2021)13

Desue v. 20/20 Eye Care Network, Inc.,
 No. 21-CIV-61275, 2023 WL 4420348 (S.D. Fla. July 8, 2023)14

Dickens v. GC Servs. Ltd. P’ship,
 706 F. App’x 529 (11th Cir. 2017)24

Francisco v. Numismatic Guaranty Corp. of Am.,
 No. 06-616677-CIV, 2008 WL 649124 (S.D. Fla. Jan. 31, 2008)18

In re Arby’s Rest. Grp., Inc. Data Sec. Litig.,
 No. 1:17-cv-1035-WMR, 2019 WL 2720818 (N.D. Ga. June 3, 2019).....13

In re Citrix Data Breach Litig.,
 No. 19-61350-CIV, 2021 WL 2410651 (S.D. Fla. Jun 11, 2021)13

In re Equifax Inc. Customer Data Security Breach Litig.,
 999 F.3d 1247 (11th Cir. 2021)23

In re Heartland Payment Sys., Inc. Customer Data Sec. Breach Litig.,
 MDL No. 09-2046, 2012 WL 896256 (S.D. Tex. Mar. 14, 2012)18

In re Lincare Holdings Inc. Data Breach Litig.,
 No. 8:22-cv-01472, 2024 WL 3104286 (M.D. Fla. June 24, 2024).....19

In re TJX Cos. Retail Sec. Breach Litig.,
 524 F. Supp. 2d 83 (D. Mass. 2007)18

In re TJX Cos. Retail Sec. Breach Litig.,
 246 F.R.D. 389 (D. Mass. 2007)18

Lone Star Nat’l Bank N.A. v. Heartland Payment Sys., Inc.,
 729 F.3d 421 (5th Cir. 2013)18

Lunsford v. Woodforest Nat’l Bank,
 No. 1:12-cv-103, 2014 WL 12740375 (N.D. Ga. May 19, 2014)20

McWhorter v. Ocwen Loan Servicing LLC,
 No. 2:15-cv-01831, 2019 WL 9171207 (N.D. Ala. Aug. 1, 2019)20

Morgan v. Pub. Storage,
 301 F. Supp. 3d 1237 (S.D. Fla. 2016)20

Sacred Heart Health Sys., Inc. v. Humana Military Healthcare Servs., Inc.,
 601 F.3d 1159 (11th Cir. 2010)24

SELCO Cmty. Credit Union v. Noodles & Co.,
 267 F. Supp. 3d 1288 (D. Colo. 2017).....18

Terrill v. Electrolux Home Prods., Inc.,
 295 F.R.D. 671 (S.D. Ga. 2013)21

Waters v. Int’l Precious Metals, Corp.,
 190 F.3d 1291 (11th Cir. 1999)19

Williams v. Mohawk Indus., Inc.,
568 F.3d 1350 (11th Cir. 2009)21

Wolff v. Cash 4 Titles,
No. 03-22778-CIV, 2012 WL 5290155 (S.D. Fla. Sept. 26, 2012).....19

Statutes

28 U.S.C. § 17158
410 ILCS 5135

Rules

Fed. R. Civ. P. 23(b)(3)..... 23, 24, 25
Fed. R. Civ. P. 23(b)(3)(D)23
Fed. R. Civ. P. 23(c)(2).....7
Fed. R. Civ. P. 23(c)(2)(B)8
Fed. R. Civ. P. 23(e)(2)..... 2, 10, 15
Fed. R. Civ. P. 23(e)(2)(A-D).....10
Fed. R. Civ. P. 23(e)(2)(C)(i)-(iv).....11
Fed. R. Civ. P. 23(e).....15
Fed. R. Civ. P. 23(e)(3).....11

Consistent with this Court’s August 28, 2024 Order Granting Preliminary Approval of Class Action Settlement (ECF No. 85), Plaintiffs Carla Tracy, Darryl Bowsky, and Deborah Harrington, on behalf of themselves and Class Members, respectfully request that the Court grant final approval of this class action settlement as it is fair, reasonable, and adequate. Plaintiffs conferred with Defendants and Defendants do not oppose this Motion.

I. INTRODUCTION

Plaintiffs move for final approval of the Settlement with Defendants Elekta, Inc. (“Elekta”) and Northwest Memorial Healthcare (“NMH”) (collectively “Defendants”). The Settlement, if approved by the Court, will resolve just under five-hundred thousand Class Members’ claims (including Plaintiffs’) against Defendants arising from the Data Incident.

The terms of the Settlement are included in the Settlement Agreement (hereinafter, “Settlement” or “SA”). ECF No. 84-1.¹ The Court previously granted preliminary approval of the proposed Settlement (ECF No. 85). Notice of the Settlement has now been disseminated to Class Members under the Notice Program set forth in the Settlement Agreement and detailed in the Settlement Administrator’s declaration in support of preliminary approval. ECF No. 84-3.

¹ Unless defined, capitalized terms have the same meaning attributable to them in the Settlement Agreement. ECF No. 84-1.

The Settlement was reached following two mediation sessions with experienced data privacy class action mediator, Jill Sperber. The negotiations were conducted at arm's-length and produced a Settlement that is fair, reasonable, and adequate and meets and/or exceeds the established legal standards governing final approval. Fed. R. Civ. P. 23(e)(2). The Settlement negotiated on behalf of the Class provides for the creation of an Eight Million Nine Hundred Thousand Dollar (\$8,900,000) non-reversionary Settlement Fund. The Settlement Fund shall be used GIPA² Cash Compensation (\$1,000 cap) or *pro rata* Cash Compensation; (2) reimbursement of Out-of-Pocket Losses of up to \$5,000; (2) Notice and Settlement Administration Expenses; (3) Attorneys' Fees and Expenses as awarded by the Court. Any remaining funds will be divided *pro rata* to potentially increase the *pro rata* Cash Compensation Payments to Class Members. If funds remain after distribution of Settlement Payment, a subsequent final payment will be distributed to a Non-Profit Residual Recipient and subject to court approval. Defendants will also make business practice changes to protect the data security of Class Members. The costs associated with these business practice changes will be separate and apart from the Settlement Amount.

² "GIPA" is the Illinois Genetic Information Protection Act, 410 ILCS 513 *et al.* See SA ¶ 1.19. The "Illinois GIPA Subclass" means all persons residing in the State of Illinois who had Genetic Information hosted by Elekta compromised as a result of the Data Incident. *Id.* ¶ 1.20.

In support of their Motion, Plaintiffs rely on the Settlement Agreement and attachments (ECF No. 84-1), the Declaration of Class Counsel in Support of Preliminary Approval of Class Action Settlement (ECF No. 84-2), and the Declaration of the Settlement Administrator (“Settlement Administrator Decl.”) **(Exhibit 1)**.

The Deadline to file a claim is December 26, 2024. As of December 4, 2024, 11,907 valid claims have been submitted. Settlement Administrator Decl. ¶ 15, Table 2. The Opt-Out and Objection deadlines were November 26, 2024 and as of December 4, 2024, 9 individuals have opted out of the Settlement and there are no objections. *Id.* ¶¶ 16-17.

II. SUMMARY OF SETTLEMENT

This Settlement would resolve all claims related to the Data Incident on behalf of the Settlement Classes. ECF No. 84-1, Settlement Agreement “SA”.

A. The Settlement Classes

The Court’s Preliminary Approval Order defines the Settlement Classes as:

Nationwide Class:

All persons residing in the United States who had their Sensitive Information hosted by Elekta compromised as a result of the Data Security Incident.

Illinois GIPA Subclass:

All persons residing in the State of Illinois who had Genetic Information hosted by Elekta compromised as a result of the Data Security Incident.

Specifically excluded from the Settlement Class are (1) the judge presiding over the class action lawsuit and the judge's direct family members; (2) the Defendants, their subsidiaries, parent companies, successors, predecessors, and any entity in which the Defendants or their parents have a controlling interest, and their current or former officers, directors, and employees; and (3) Settlement Class Members who submit a valid request to be excluded from the Settlement. SA, ¶ 1.42. The Settlement Class is comprised of approximately 489,932 individuals nationwide. Settlement Administrator Decl. ¶¶ 6, 8, 14. Under the Proposed Settlement, Defendants agreed to pay a total of \$8,900,000 into the Settlement fund, which will be used to make payments of all Costs of Settlement Administration, Class Counsel's Attorneys' Fees and Expenses, approved Out-of-Pocket Loss Claims, and approved *Pro Rata* Cash Payments, including GIPA Cash Compensation. *Id.* ¶¶ 3.1, 3.3.

B. The Settlement Benefits

1. Settlement Payments.

Each Settlement Class Member is eligible to receive reimbursement for documented out-of-pocket unreimbursed losses incurred as a result of the Data Incident ("Out-of-Pocket Losses") subject to the settlement cap of \$5,000. *See* SA ¶ 3.2. Amounts that are eligible to be reimbursed as Out-of-Pocket Losses must

include supporting documentation and more likely than not were the result of the Data Incident. *Id.* Out-of-Pocket Losses include but are not limited to, unreimbursed payment card fees or bank fees, card reissuance fees, unreimbursed overdraft fees, unreimbursed charges related to unavailability of funds, unreimbursed late fees, unreimbursed over-limit fees and unreimbursed fees related to an account being frozen or otherwise unavailable due to the Data Incident, cell, internet or text charges, unreimbursed costs or charges for obtaining credit reports or credit freezes incurred on or after May 2021 and other unreimbursed costs associated with fraud or identity theft, including attorneys' fees and accountant fees, and postage costs. *Id.* ¶ 1.29.

2. Illinois GIPA Claims.

Settlement Class Members may submit a claim via the Claim Form for a GIPA Cash Payment. After distribution of attorneys' fees, expenses, administrative fees, compensation of Out-of-Pocket expenses, the Settlement Administrator will make *pro rata* settlement payments for 50% of any remaining settlement funds to each Illinois GIPA Subclass Member who submits a valid claim for GIPA cash compensation, which is capped at \$1,000 per individual. SA ¶ 3.1(a).

The GIPA Cash Payment claim requires the attestation by Class Members stating that they are current or former Illinois residents and that they personally shared or provided their Genetic Information with NMH or any Elekta Customer

located in Illinois at any time before the Data Incident. *Id.* The funds remaining after paying all GIPA Cash Payments up to the \$1,000 cap will be distributed to Settlement Class Members who make pro rata Cash Payment claims. *Id.*

3. Pro Rata Cash Payment.

Settlement Class Members may submit a claim via the Claim Form for a *pro rata* Cash Compensation Payment. SA ¶ 3.1(b). After distribution of attorneys' fees, Class Counsel's Litigation Expenses, Administrative Fees, and Compensation for Out-of-Pocket Expenses, the Settlement Administrator will make *pro rata* settlement payments of 50% of any remaining funds to each Class Member who submits a claim plus any amount remaining from the GIPA Cash Payments that exceed the \$1,000 cap. *Id.*

4. Cy Pres Recipient.

If any monies remain in the Qualified Settlement Fund more than one hundred-twenty (120) days after the distribution of Settlement Payments, a subsequent payment will be distributed to a Non-Profit Residual Recipient to be proposed by Class Counsel and agreed by Elekta, subject to court approval. SA ¶ 3.8.

5. Business Practice Changes.

Elekta agrees to provide written confirmation to Class Counsel of business practice changes it has taken after the Data Incident to protect the data security of

the Settlement Class. All costs associated with these business practice changes will be separate from the Settlement Amount. *Id.* ¶ 3.9.

6. Release.

The release in this case is tailored to the claims that have been pleaded or could have been pleaded and final upon the date judgment becomes final. Settlement Class Members who do not opt-out from the Settlement Agreement will release claims related to the Data Incident. SA ¶¶ 7.2, 9.1.

C. The Notice and Claims Process

1. Notice.

The Parties agreed to use EisnerAmper as the Notice and Settlement Administrator (“Settlement Administrator”). SA ¶ 1.40. Based on the Court’s preliminary approval Order (ECF No. 85, ¶ 8), Class Counsel and the Settlement Administrator implemented a direct mail notice plan, including individual direct mail notice to all members who could be identified through reasonable effort. Fed. R. Civ. P. 23(c)(2). ECF No. 84-3, ¶ 11. The direct mail notice consisted of a postcard, with a tear-off claim form and pre-paid postage (ECF No. 84-1, Ex. D) mailed via United States Postal Service (“USPS”) First Class Mail to the Settlement Class Members identified in the Class Member Information list. *Id.* On September 27, 2024, the Settlement Administrator posted the Notice to the Settlement Website located at www.elektadatasettlement.com. (ECF No. 84-3, ¶ 12). On September 27,

2024, the Settlement Administrator commenced mailing Notice to 489,932 Settlement Class Members via U.S. Mail. Settlement Administrator Decl. ¶ 14. The Notice reached 88.7% of the 489,932 Settlement Class Members. *Id.*, 14. This goes well beyond the 70% notice threshold that is often cited as meeting the requirements of Rule 23(c)(2)(B) and due process. Federal Judicial Center, *Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide*, at 3 (2010), www.fjc.gov/sites/default/files/2012/NotCheck.pdf

2. Payment of Administrative and Notice Costs.

Defendants agreed to pay the cost of providing CAFA Notice, separate and apart from the Settlement Fund. SA ¶ 1.33. Pursuant to 28 U.S.C. § 1715, the Settlement Administrator, on behalf of Defendants, coordinated and administered the distribution and mailing of CAFA Notice on August 30, 2024. ECF No. 87-1. The remainder of the notice costs and administration expenses will be paid out of the Settlement Fund.

3. Opt-Out and Objection Procedures.

Class Members had up to and including November 26, 2024 to decide whether to object or to exclude themselves from the Settlement. SA ¶¶ 7.1, 8.1. Class Members wishing to opt out of the Settlement Classes were required to submit a

Request for Exclusion to the Settlement Administrator postmarked no later than November 26, 2024, as described in the Long Notice. SA, Ex. B, ¶ 15.³

Any Settlement Class Member who wished to object to the Settlement or opt-out, was required to submit a timely written notice of his or her objection or opt-out to the Court and the Settlement Administrator no later than November 26, 2024.

4. Fees and Costs.

On November 12, 2024, Class Counsel filed Plaintiffs' Motion for Attorneys' Fees and Litigation Expenses. ECF No. 88. Class Counsel seek \$2,966,666.66, or 33.33% of the Settlement Fund to proposed Class Counsel for attorneys' fees and \$23,688.19 in costs and expenses. *Id.*

III. THE SETTLEMENT WARRANTS FINAL APPROVAL

The \$8,900,000 non-reversionary common fund settlement for approximately 489,932 Class Members including several forms of cash payments is fair, reasonable, and adequate when analyzed under the relevant factors for determining whether to grant final approval of class action settlement.

³ The exact date of exclusion and opt out of November 26, 2024, is based on the date the Court issued its Preliminary Approval Order on August 28, 2024. ECF No. 85, ¶ 9. The Settlement Timeline indicates that the postmark deadline for Requests for Exclusion (opt outs) or Objections is "60 days after commencement of Notice Plan," which is "30 days after entry of Preliminary Approval Order." *Id.*

A. Legal Standard for Final Approval of Class Action Settlement

Class actions may be settled only upon the court’s determination that the settlement is “fair, reasonable, and adequate” after considering a number of factors. Fed. R. Civ. P. 23(e)(2). The Eleventh Circuit has established the six *Bennett* factors to evaluate whether to grant final approval of class action settlement: “(1) the likelihood of success at trial; (2) the range of possible recovery; (3) the point below the range of possible recovery at which a settlement is fair, adequate and reasonable; (4) the complexity expense and duration of litigation; (5) the substance and amount of opposition to the settlement; and (6) the stage of the proceedings at which the settlement was achieved.” *Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984).

Federal Rule 23(e)(2) also identifies several factors that must be considered when determining whether a class action settlement is fair, reasonable, and adequate: “whether (A) the class representatives and class counsel have adequately represented the class; (B) the proposal was negotiated at arm’s length; (C) the relief provided for the class is adequate . . . ; and (D) the proposal treats all class members equitably relative to each other.” Fed. R. Civ. P. 23(e)(2)(A-D). In considering whether the settlement relief provided is sufficient, courts must consider “(i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the

terms of any proposed award of attorneys' fees including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3)." Fed. R. Civ. P. 23(e)(2)(C)(i)-(iv). In considering these factors, "[t]here is an overriding public interest in favor of settlement, particularly in class actions that have the well-deserved reputation of being most complex." *Ass'n for Disabled Ams., Inc. v. Amoco Oil Co.*, 211 F.R.D. 457, 466 (S.D. Fla. 2002).

B. Argument

1. The *Bennett* Factors Weigh in Favor of Final Approval

a. The Benefits of the Settlement Outweigh the Risks of Future Litigation

The cash payments to Class Members for potentially several types of alleged injury are a strong recovery for Class Members compared to the backdrop of uncertainty that continued litigation brings. For example, in the absence of the Settlement, Plaintiffs would need to successfully petition the Court for class certification and survive a motion for summary judgment before having their day in court for a possible trial. Continued litigation of this matter would bring uncertain results and risks. A Settlement now on the terms Plaintiffs were able to forge in the form of a non-reversionary \$8,900,000 common fund providing cash benefits to Class Members compares well against the risk inherent with future litigation in a data breach class action. Accordingly, this factor supports final approval.

b. The Settlement Compares Favorably to Other Common Fund Data Breach Settlements

The \$8,900,000 non-reversionary common fund is a sound recovery for the Settlement Class of approximately 489,932 individuals and compares well with other recent data breach cases. The chart below compares the amount recovered per Settlement Class Member against the amount recovered in several other recent data breach class action settlements⁴ and highlights the beneficial result achieved for the Settlement Class:

Case Name	Case Number	Settlement Amount	Class Size	Per Person
<i>Sherwood v. Horizon Actuarial Services, LLC</i>	No. 1:22-cv-1495 (N.D. Ga.)	\$8,733,446.36	4,386,969	\$1.99
<i>In re C.R. England, Inc. Data Breach Litigation</i>	No. 2:22-cv-374 (D. Utah)	\$1,400,000	224,572	\$6.23
<i>Reynolds v. Marymount Manhattan College</i>	No. 1:22-cv-06846 (S.D.N.Y.)	\$1,300,000	191,752	\$6.78
<i>Julien v. Cash Express, LLC</i>	No. 2022-CV-221 (Putnam Cty., Tenn.)	\$850,000	106,000	\$8.02
<i>Tucker v. Marietta Area Health Care</i>	No. 2:22-CV-00184 (S.D. Ohio)	\$1,750,000	216,478	\$8.08
<i>In re Overby-Seawell Co., Customer Data</i>	No. 1:23-md-03056-SDG (N.D. Ga.)	\$6,000,000	607,924	\$9.87

⁴ Counsel recognize that different types of impacted data and other factors may impact the settlement terms of every data security incident class action.

<i>Security Breach Litig.</i>				
<i>Phillips v. Bay Bridge Administrators, LLC</i>	No. 23-cv-00022 (W.D. Tex.)	\$2,516,890	251,890	\$10.00
<i>Tiller v. Hilb Group Operating, LLC</i>	No. 3:23-cv-00759 (JAG) (E.D. Va.)	\$1,600,000	108,954	\$14.68
<i>Migliaccio v. Parker Hannifin Corp.</i>	No. 1:22-CV-00835 (N.D. Ohio)	\$1,750,000	115,843	\$15.10
<i>Tracy v. Elekta, Inc.</i>	No. 1:21-cv-2851 (N.D. Ga.)	\$8,900,000	489,932	\$18.17
<i>Anderson v. U-Haul Int'l, Inc.</i>	No. CV-22-01565	\$5,085,000	259,000	\$19.63

The roughly \$18.17 per Settlement Class Member recovery in this case exceeds the amount recovered in the majority of the cases listed above.

c. Continued Litigation Would be Time Consuming and Expensive

Data breach class actions are complex and remain unpredictable. *See Cotter v. Checkers Drive-In Rests., Inc.*, No. 8:19-cv-1386, 2021 WL 3773414, at *12 (M.D. Fla. Aug. 25, 2021) (noting data breach class actions present “serious risks” due, in part, to “the ever-developing law surrounding data breach cases”); *In re Citrix Data Breach Litig.*, No. 19-61350-CIV, 2021 WL 2410651, at *3 (S.D. Fla. Jun 11, 2021) (“Data breach cases in particular present unique challenges with respect to issues like causation, certification, and damages.”); *In re Arby’s Rest. Grp., Inc. Data Sec. Litig.*, No. 1:17-cv-1035-WMR, 2019 WL 2720818, at *3 (N.D. Ga. June

3, 2019) (“Further, data breach litigation involves the application of unsettled law with disparate outcomes across states and circuits. Georgia law, in particular, presents challenges.”). This case is no exception. The pursuit of nationwide claims and relief presented complex issues of law and fact. These issues underscore the fact that continued litigation would be time consuming and expensive and weigh in favor of final approval.

d. The Class Overwhelming Supports the Settlement

The Class has responded very favorably to this Settlement in that 11,907 valid claims have been submitted out of the approximately 489,932 Class Members. Settlement Administrator Decl. ¶ 15, Table 2. In addition to the claims, there were only nine (9) exclusion requests with one of those being untimely and no objections. *Id.* ¶ 16. The 9 exclusion requests equate to a very low .0018% of the Class excluding themselves from the Settlement. The absence of any objection to the settlement “strongly favors” final approval. *Desue v. 20/20 Eye Care Network, Inc.*, No. 21-CIV-61275, 2023 WL 4420348, at *9 (S.D. Fla. July 8, 2023); *see also Access Now, Inc. v. Claire’s Stores, Inc.*, No. 00-14017, 2022 WL 1162422, at *7 (S.D. Fla. May 7, 2002) (“The fact that no objections have been filed strongly favors approval of the settlement.”).

Given the lack of objection, only 9 timely exclusion requests, and roughly 12,000 current valid claims, the fifth *Bennett* factor weighs in favor of final approval as the Class has responded favorably to the Settlement and its cash benefits.

e. Plaintiffs had Sufficient Information to Thoroughly Evaluate the Merits of the Case and Negotiate a Favorable Settlement

Plaintiffs were well informed when negotiating the resolution of this Litigation. Declaration of Terence R. Coates in Support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement (“Coates Preliminary Approval Decl.”), ECF No. 84-2, ¶¶ 6-8. Plaintiffs submitted a list of settlement discovery requests to Defendants for the purpose of gaining sufficient information to make a well-informed demand. Before submitting their demand for a class-wide settlement, Plaintiffs knew the size of the class, the data elements potentially impacted by the Data Incident, and that Defendants had insurance coverage for Plaintiffs’ claims. Coates Preliminary Approval Decl. ¶ 8. This information gave Plaintiffs the ability to analyze their own and the Class’s claims and to understand the potential for class-wide damages. *Id.* Accordingly, Plaintiffs had sufficient information to evaluate the merits of their claims. This factor weighs in favor of final approval.

2. The Rule 23(e) Factors Support Final Approval

a. The Class was Adequately Represented

The first step in finally approving a class action settlement under Rule 23(e)(2) involves two questions: “(1) whether the [class representatives] have interests

antagonistic to the interests of other class members; and (2) whether the proposed class's counsel has the necessary qualification and experience to lead the litigation.” *Columbus Drywall & Insulation, Inc. v. Masco Corp.*, 258 F.R.D. 545, 555 (N.D. Ga. 2007). For purposes of settlement, Plaintiffs are adequate representatives for the Class and GIPA Subclass because they asserted claims against Defendants due to their Sensitive Information being impacted in the Data Incident – the same Data Incident that also impacted the Sensitive Information of the Class. Accordingly, for these purposes the Class Representatives have the same claims and same cause of their injuries as the rest of the Class Members. Furthermore, Plaintiffs stayed apprised of the case's progress and remained engaged in this Litigation by reviewing the allegations in the Complaint and reviewing and approving the terms of the Settlement Agreement. Coates Preliminary Approval Decl. ¶ 24.

Class Counsel are appropriately qualified to lead this Litigation on behalf of Plaintiffs and the Class. Class Counsel have represented plaintiffs in state and federal courts across the country in data privacy class actions and have achieved many recent favorable results for plaintiffs. *Id.* ¶¶ 3-4. Class Counsel's skill in utilizing informed settlement discovery requests to receive the information necessary to make an informed demand and in procuring tangible cash benefits for Class Members further demonstrates that Class Counsel are sufficiently qualified to serve as Class Counsel in this Litigation.

b. The Settlement was Negotiated at Arm's Length

The Settlement was negotiated over several months with Plaintiffs submitting a demand to Defendants only after receiving details on the class size, details on the data elements impacted by the Data Incident, and that Defendants had potentially credible defenses. Coates Preliminary Decl. ¶¶ 8, 10. Plaintiffs and Defendants then participated in two mediation sessions with skilled data privacy class action mediator Jill Sperber. Ultimately, Plaintiffs were able to achieve their preferred settlement structure of a non-reversionary common fund that will permit Class Members to receive cash payments and the potential for a *pro rata* increase to the *pro rata* cash payment to the extent any settlement funds remain unclaimed through the claims process. These facts demonstrate that the Settlement was negotiated at arm's length with the assistance of counsel for each side who are experienced in handling data privacy class actions.

c. The Settlement Provides Class Members with Significant Cash Benefits

The Settlement provides Class Members with cash benefits including up to \$5,000 in documented out-of-pocket losses and either a Pro Rata Cash Payment or Pro Rata GIPA Cash Payment. These cash payments permit Class Members to pick and choose one or two of the cash settlement benefits through the use of a simplified tear-off claim form that was included in the Short Form Notice or online via the Settlement Website. The *pro rata* nature of the cash payments is also important

because it permits Class Members to increase their settlement benefits (capped at \$1,000 for the GIPA Cash Payment) to the extent that any funds remain in the Settlement Fund after claims have been processed.

d. The Complexity, Expense, and Risk of Future Litigation

“Class actions are inherently complex to prosecute because the legal and factual issues are complicated and uncertain in outcome.” *Francisco v. Numismatic Guaranty Corp. of Am.*, No. 06-616677-CIV, 2008 WL 649124, at *15 (S.D. Fla. Jan. 31, 2008). Data breach cases are complex and carry significant risk in that some cases have failed at the dismissal or class certification stages.⁵ *See, e.g., SELCO Cmty. Credit Union v. Noodles & Co.*, 267 F. Supp. 3d 1288, 1292 (D. Colo. 2017) (dismissing a nationwide class action for a data breach at Noodles & Co, holding Colorado’s economic loss rule prohibited tort damages caused by the data breach); *In re Heartland Payment Sys., Inc. Customer Data Sec. Breach Litig.*, MDL No. 09-2046, 2012 WL 896256 (S.D. Tex. Mar. 14, 2012) (after three rounds of dismissal motions, dismissing among other claims, negligence), *rev’d sub nom., Lone Star Nat’l Bank N.A. v. Heartland Payment Sys., Inc.*, 729 F.3d 421, 424 (5th Cir. 2013) (concluding that New Jersey’s economic loss doctrine could not be applied at dismissal stage); *In re TJX Cos. Retail Sec. Breach Litig.*, 524 F. Supp. 2d 83 (D.

⁵ Understanding that there is overlap between *Bennett* factors and the Rule 23(e) factors relating to the complexity, expense, and risks of future litigation, Plaintiffs incorporate their arguments above under Section III.B.1.c. above to avoid repetition.

Mass. 2007) (dismissing claims for negligence and negligence per se), *aff'd*, 564 F.3d 489 (1st Cir. 2009), and 246 F.R.D. 389, 400 (denying class certification because individual issues of reliance, causation, and damages predominated).

e. The Terms Relating to Attorneys' Fees are Reasonable

Here, the attorneys' fees request of one-third of the \$8,900,000 common fund is consistent with the Settlement Agreement, the content of the Notices, and the Motion for Attorneys' Fees and Litigation Expenses that were filed with the Court and posted on the Settlement Website. Furthermore, Class Counsel's attorneys' fees request of one-third of the common fund is consistent with fee awards in similar common fund settlements within this Circuit. *See, e.g., Sherwood v. Horizon Actuarial Services, LLC*, No. 1:22-cv-1495-ELR (ECF No. 94) (N.D. Ga. Apr. 2, 2024) (approving attorneys' fees of \$2,911,148.79 consisting of 1/3 of the \$8,733,446.36 settlement fund in a data breach class action); *In re Lincare Holdings Inc. Data Breach Litig.*, No. 8:22-cv-01472, 2024 WL 3104286, at *3-4 (M.D. Fla. June 24, 2024) (approving attorneys' fees of \$2,416,666.67 consisting of 1/3 of the \$7,250,000 settlement fund in a data breach class action); *Wolff v. Cash 4 Titles*, No. 03-22778-CIV, 2012 WL 5290155, at *5-6 (S.D. Fla. Sept. 26, 2012) ("The average percentage award in the Eleventh Circuit mirrors that of awards nationwide -roughly one-third"); *Alghadeer Bakery & Marker, Inc. v. Worldpay US, Inc.*, No. 1:18-cv-02688-MLB, 2020 WL 10935986, at *4 (N.D. Ga. June 3, 2020) ("The fee

represents one-third of the \$15 million cash settlement fund, which the Court finds to be reasonable and consistent with awards in similar cases in this Circuit.”); *Waters v. Int’l Precious Metals, Corp.*, 190 F.3d 1291, 1292-98 (11th Cir. 1999) (affirming attorneys’ fees of 1/3 of the \$40 million common fund); *Lunsford v. Woodforest Nat’l Bank*, No. 1:12-cv-103, 2014 WL 12740375, at *15 (N.D. Ga. May 19, 2014) (fee award of 1/3 of the common fund); *Cabot E. Broward 2 LLC v. Cabot*, No. 16-61217-CIV, 2018 WL 5905415, at *7-8 (S.D. Fla. Nov. 9, 2018) (awarding fee of \$33,333,333 of the \$100 million common fund); *Morgan v. Pub. Storage*, 301 F. Supp. 3d 1237, 1257 (S.D. Fla. 2016) (noting that “a fee award of 33% ... is consistent with attorneys’ fees awards in federal class actions in this Circuit.”). Class Counsel’s attorneys’ fee request of 1/3 (\$2,966,666,67) of the \$8,900,000 common fund is reasonable because it is within the range typically approved by courts within the Eleventh Circuit.

f. No Other Agreements Exist under Rule 23(e)(3)

The Settlement Agreement and attachments are the only agreements impacting the Settlement. Accordingly, there are no additional agreements for the Court to consider. This factor also supports final approval.

g. Class Members are Treated Equitably Relative to Each Other

Each Class Member is eligible to submit a claim for one or more cash settlement benefits. Furthermore, all Class Members were afforded ample

opportunity to opt-out or object to the Settlement. *See McWhorter v. Ocwen Loan Servicing LLC*, No. 2:15-cv-01831, 2019 WL 9171207, at *12 (N.D. Ala. Aug. 1, 2019) (noting that class members’ ability to exclude themselves from a settlement indicates equitable treatment of class members and supports final approval).

IV. THE COURT SHOULD CERTIFY THE SETTLEMENT CLASS

A. The Rule 23(a) Requirements are Satisfied

Rule 23(a)’s numerosity, commonality, typicality, and adequacy requirements are satisfied for purposes of this Settlement.

Numerosity: The Class of approximately 489,932 individuals is sufficiently “numerous that joinder of all class members is impracticable” thereby satisfying Rule 23(a)’s numerosity requirement.

Commonality: Commonality “requires ‘that there be at least one issue whose resolution will affect all or a significant number of putative class members,’” *Williams v. Mohawk Indus., Inc.*, 568 F.3d 1350, 1355 (11th Cir. 2009), and “is generally satisfied when a plaintiff alleges that defendants have engaged in a standardized course of conduct that affects all class members.” *Terrill v. Electrolux Home Prods., Inc.*, 295 F.R.D. 671, 685 (S.D. Ga. 2013), *vacated and remanded on other grounds*, *Brown v. Electrolux Home Prods.*, 817 F.3d 1225 (11th Cir. 2016). Here, Plaintiffs, on behalf of all Class Members, assert that the Class’s Sensitive Information was compromised as a result of the Data Incident, and the Class brings

the same legal claims based on Defendants' common conduct. All Class Members' claims arise out of Defendants' conduct resulting in the Data Incident. Accordingly, commonality is satisfied for purposes of settlement.

Typicality: In order to satisfy the typicality requirement of Rule 23(a)(3), the claims or defenses of the representative parties must be typical of the claims or defenses of the class. "Typicality is satisfied where the named plaintiffs' claims arise from the same event or pattern or practice and are based on the same legal theory as the claims of the class" *Burhl v. Price Waterhousecoopers Int'l.*, 257 F.R.D. 684, 689 (S.D. Fla. 2008). Here, the claims of all Class Members involve Defendants' alleged failure to protect Plaintiffs' and Class Members' Sensitive Information. Thus, Plaintiffs' claims are typical of those of the claims of the Class, and they are appropriate Class Representatives. Typicality is satisfied for purposes of settlement.

Adequacy: As mentioned above, Plaintiffs and Class Counsel have adequately represented the Class. Accordingly, Rule 23(a)'s adequacy requirement is satisfied for purposes of this settlement. With all four of Rule 23(a)'s requirements met in this case, final class certification is warranted.

B. The Rule 23(b)(3) Requirements are Satisfied

Final class certification is also appropriate because Plaintiffs and the Class meet Rule 23(b)(3)'s predominance and superiority requirements for purposes of this settlement. Rule 23(b)(3) requires that "questions of law or fact common to class

members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.” *In re Equifax Inc. Customer Data Security Breach Litig.*, 999 F.3d 1247, 1275 (11th Cir. 2021). When assessing predominance and superiority, the court may consider that the class will be certified for settlement purposes only, and that a showing of manageability at trial is not required. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997) (“Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems, *see* Fed. Rule Civ. P. 23(b)(3)(D), for the proposal is that there be no trial.”).

For purposes of settlement, the common factual and legal questions all cut to the issues “at the heart of the litigation.” Indeed, the answers to these questions are not tangential or theoretical such that the litigation will not be advanced by certification. Rather, they go right to the center of the controversy, and the answers will be the same for each Class Member. As such, because the class-wide determination of these issues will be the same for everyone and will determine whether any class member has a right of recovery, the predominance requirement is readily satisfied for settlement.

The second prong of Rule 23(b)(3)—that a class action is superior to other available methods for the fair and efficient adjudication of the controversy—is also

readily satisfied for the purpose of this settlement. *See* Fed. R. Civ. P. 23(b)(3). A superiority analysis pursuant to Rule 23(b)(3) involves an examination of “the relative advantages of a class action suit over whatever other forms of litigation might be realistically available to the plaintiffs.” *Sacred Heart Health Sys., Inc. v. Humana Military Healthcare Servs., Inc.*, 601 F.3d 1159, 1183-84 (11th Cir. 2010) (internal quotation omitted). The Agreement provides Settlement Class Members with certain relief and contains well-defined administrative procedures to ensure due process. This includes the right of any Class Member to object to it or to request exclusion. Moreover, there is no indication that Class Members have an interest in individual litigation or an incentive to pursue their claims individually, given the amount of damages likely to be recovered, relative to the resources required to prosecute such an action. *See Dickens v. GC Servs. Ltd. P’ship*, 706 F. App’x 529, 538 (11th Cir. 2017) (describing “the ways in which the high likelihood of a low per-class-member recovery militates in favor of class adjudication”).

For purposes of settlement adjudicating individual actions here is impracticable. The amount in dispute for individual class members is too small, the technical issues are too complex, and the required expert testimony and document review would be far too costly. In no case are the individual amounts at issue sufficient to allow anyone to file and prosecute an individual lawsuit—at least not with the aid of competent counsel. Instead, the individual prosecution of Class

Members' claims would be prohibitively expensive, and, if filed, would needlessly delay resolution and lead to inconsistent rulings. Because this Litigation is being settled on a class-wide basis, such theoretical inefficiencies are resolved, and the Court need not consider further issues of manageability relating to trial. *See Amchem*, 521 U.S. at 620 (“[c]onfronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems, for the proposal is that there will be no trial.”).

Thus, the Court should grant final approval of class action settlement including finally certifying the Settlement Class under Rule 23(b)(3).

CONCLUSION

For these reasons, Plaintiffs and Class Counsel respectfully ask the Court to enter an Order Granting Final Approval of Class Action Settlement. A proposed Order Granting Final Approval of Class Action Settlement is attached as **Exhibit 2**.

Dated: December 6, 2024

Respectfully submitted,

/s/ Terence R. Coates

Terence R. Coates (pro hac vice)

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Class Counsel for Plaintiffs

CERTIFICATE OF COMPLIANCE

Pursuant to LR 7.1(D), I hereby certify that the foregoing has been prepared in Times New Roman 14 point, one of the fonts and points approved by the Court in LR 5.1(C).

/s/ Terence R. Coates _____

Terence R. Coates

CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing was served upon all parties by filing with the Court's CM/ECF in accordance with Fed. R. Civ. P. 5(b)(2)(E).

Dated: December 6, 2024.

/s/ Terence R. Coates

Terence R. Coates

EXHIBIT

1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CARLA TRACY, DARRYL BOWSKY,
and DEBORAH HARRINGTON,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

ELEKTA, INC., and NORTHWESTERN
MEMORIAL HEALTHCARE,

Defendants.

Judge Steven D. Grimberg

Case No. 1:21-cv-02851

DECLARATION OF SETTLEMENT ADMINISTRATOR

I, Jordan Turner, hereby declare and verify as follows:

I. INTRODUCTION

1. ***Personal Information.*** I am a Project Manager for the Court-appointed Settlement Administrator, EisnerAmper. EisnerAmper was retained as the Settlement Administrator in this case, and, as the Project Manager over this Settlement, I am personally familiar with the facts set forth in this declaration.

2. ***The Capacity and Basis of this Declaration and Verification.*** I am over the age of 21. Except as otherwise noted, the matters set forth in this Declaration are based upon my personal knowledge, information received from the parties in this proceeding, and information provided by my colleagues at EisnerAmper and our partners.

II. BACKGROUND

3. **Preliminary Approval.** On August 28, 2024, the Court entered its order preliminarily approving the Settlement Agreement and the appointment of EisnerAmper as Settlement Administrator. After the Court's preliminary approval of the Settlement, EisnerAmper began to implement and coordinate the Notice program.

4. **The Purpose of this Declaration and Verification.** I submit this Declaration to evidence EisnerAmper's compliance with the Preliminary Approval Order terms, to detail EisnerAmper's execution of its role as the Settlement Administrator, and to verify compliance with the Notice requirements contained in the Settlement Agreement, and the Court's Preliminary Approval Order.

III. CLASS ACTION FAIRNESS ACT ("CAFA")

5. **CAFA Notice.** On August 30, 2024, pursuant to 28 U.S.C. § 1715, EisnerAmper, on behalf of the Defendants, caused Notice of this settlement and related materials to be sent to the Attorneys General of all U.S. states, as well as the Attorney General of the United States. *See* Declaration of Jordan Turner on Implementation of CAFA Notice. *See* ECF No. 87-1.

IV. CLASS ACTION NOTICE PROGRAM EXECUTION

6. **Notice Database.** EisnerAmper maintains a database of 489,932 Settlement Class Members which was used to effectuate the Notice campaign as outlined within the Settlement Agreement. EisnerAmper received the class data from Defendants' Counsel on September 4, 2024, in one Excel file with a total of 498,744 records. The Excel file contained the full name and address of the Settlement Class Members. EisnerAmper de-duplicated the data records provided based on name and address and determined that 489,932 unique Settlement Class Members existed to which Notice should be issued as outlined within the Settlement Agreement.

7. **Mail Notice.** EisnerAmper coordinated and caused the Short Notice to be mailed via First-Class Mail to Settlement Class Members for which a mailing address was available from

the class data. The Short Notice included (a) the web address to the Settlement Website for access to additional information, (b) rights and options as a Settlement Class Member and the dates by which to act on those options, the requested attorneys' fees, and (c) the date of the Final Approval Hearing. The Notice mailing commenced on September 27, 2024, in accordance with the Preliminary Approval Order. A true and correct copy of the Short Notice is attached hereto as **Exhibit A**, with a copy of the Long Notice and Claim Form.

8. Mailing Address Validation Prior to the mailing, all mailing addresses were checked against the National Change of Address (NCOA) database maintained by the United States Postal Service ("USPS"). In addition, the addresses were certified via the Coding Accuracy Support System (CASS) to ensure the quality of the zip code and verified through Delivery Point Validation (DPV) to verify the accuracy of the addresses. Of the 489,932 Settlement Class Member records, 2,341 records did not successfully pass the address validation procedures noted above.

9. Mail Notice Delivery. In the initial mailing campaign, EisnerAmper executed mailings to the 487,591 Settlement Class Members that passed address validation. EisnerAmper executed skip tracing on the 2,341 records that did not pass address validation and was able to mail Short Notice to an additional 1,434 Settlement Class Members. EisnerAmper also executed supplemental mailings to 60,278 Settlement Class Members, for which the initial Short Notice was not deliverable but for which EisnerAmper was able to obtain an alternative mailing address through (1) forwarding addresses provided by the USPS, (2) skip trace searches using the LexisNexis third-party vendor database, or (3) requests received directly from Settlement Class Members. EisnerAmper performed a second skip trace search for any undeliverable mailings that did not produce a result in the initial skip trace process to obtain an alternative mailing address. Mail Notice delivery statistics are detailed in paragraph 14 below.

10. Settlement Post Office Box. EisnerAmper maintains the following Post Office Box (the "P.O. Box") for the Settlement Program:

Elekta Data Settlement Administrator
PO Box 1429

Baton Rouge, LA 70821

This P.O. Box serves as a location for the USPS to return undeliverable program mail to EisnerAmper and for Settlement Class Members to submit a request for exclusion and other settlement-related correspondence. The P.O. Box address appears prominently in all Notices and in multiple locations on the Settlement Website. EisnerAmper monitors the P.O. Box daily and uses a dedicated mail intake team to process each item received.

11. **Settlement Website.** On September 27, 2024, EisnerAmper published the Settlement Website, www.elektadatasettlement.com. Visitors to the Settlement Website can download the Long Notice, the Claim Form, as well as Court Documents, such as the Class Action Complaints, the Consolidated Amended Class Action Complaint, the Settlement Agreement, Motions filed by Class Counsel, and Orders of the Court. Visitors are also able to submit claims electronically, download a Claim Form to submit by mail, and find answers to frequently asked questions (FAQs), important dates and deadlines, and contact information for the Settlement Administrator. As of December 4, 2024, the Settlement Website received 16,063 unique visits.

12. **Toll-Free Number.** On September 27, 2024, EisnerAmper established a dedicated toll-free telephone number, 1-844-377-6369 (the “Toll-Free Number”), which is available twenty-four hours per day. Settlement Class Members can call and interact with an interactive voice response (“IVR”) system that provides important settlement information. The Toll-Free Number offers the ability to speak with a live operator if calling Monday through Friday between the hours of 9:00 a.m. and 6:00 p.m. US Central Time or to leave a voicemail message to address specific requests or issues. EisnerAmper also provided copies of the Long Notice and paper Claim Form, as well as the Settlement Agreement, upon request to Settlement Class Members, through the Toll-Free Number. The Toll-Free Number appeared in all Notices, as well as in multiple locations on the Settlement Website. The Toll-Free Number will remain active through the close of this Settlement Program.

13. **Email Support.** EisnerAmper established an Email address, info@elektadatasettlement.com, to provide an additional option for Settlement Class Members to address specific questions and requests to the Settlement Administrator for support.

V. **NOTICE PROGRAM REACH**

14. **Notice Reach Results.** Through the Notice procedures outlined above, EisnerAmper attempted to send direct Notice to 489,025 (99.8%) Settlement Class Members. As of December 4, 2024, the Notice Program reached a total of 434,571 (88.7%) Settlement Class Members.¹ Table 1 below provides an overview of dissemination results for the Notice Program and reach statistics for the Notice Program.

Table 1: Direct Notice Program Dissemination & Reach		
Description	Volume of Settlement Class Members	Percentage of Settlement Class Members (%)
Settlement Class Members	489,932	100.0%
Initial Notice Mailing		
(+) Notices Mailed (Initial Campaign)	487,591	99.5%
(+) Notices Mailed (Initial Skip Traces)	1,434	0.3%
(-) Total Notices Returned as Undeliverable	103,026	21.0%
Supplemental Notice Mailing		
(+) Total Unique Notices Re-mailed	60,278	12.3%
(-) Total Undeliverable (Re-Mailed) Notices	11,706	2.4%
Direct Notice Program Reach		
(=) Received Direct Notice	434,571	88.7%

VI. **CLAIM ACTIVITY**

15. **Claim Intake and Processing.** The online claim submission feature was available beginning September 27, 2024. As of December 4, 2024, EisnerAmper has received a total of 12,021 claims. Of these, EisnerAmper has determined that 11,907 claims (approximately 2.4% of the Settlement Class Members) are from Settlement Class Members and are non-duplicative

¹ A Settlement Class Member is considered “reached” by direct Notice if a Notice mailed to the Settlement Class Member has not been returned by the USPS as undeliverable or, if a Notice mailed to the Settlement Class Member was returned by the USPS as undeliverable, a subsequent Notice was mailed to an alternative mailing address for the Settlement Class Member and was not returned.

claims. EisnerAmper will continue to intake and analyze claims through the claims filing deadline of December 26, 2024. Table 2 below provides summary statistics of Claim submissions and current dispositions. Table 3 below provides a summary of the approved claims and estimated awards as of December 4, 2024. Assuming Class Counsel is awarded their requested fees and administrative costs as outlined in section 18, the pro rata cash payments are currently estimated to be \$1,000.00 for the GIPA Cash Payment and \$349.92 for the Pro Rata Cash Payment.

Table 2: Claims Statistics (as of December 4, 2024)	
Description	Volume
Total Claims Received	12,021
(-) Duplicate Claims	48
(-) Invalid Claims: Not a Settlement Class Member	66
Net Claims	11,907

Table 3: Approved Claims Summary (as of December 4, 2024)		
Claim Form Category	Claimed	Approved
Number of Times GIPA Cash Payment Claimed	2,243	2,243
GIPA Cash Payment (\$)²	\$2,243,000.00	\$2,243,000.00
Number of Times Pro Rata Cash Payment Claimed	9,331	9,331
Pro Rata Cash Payment (\$)³	\$3,265,103.52	\$3,265,103.52
Number of Times Out-of-Pocket Losses Claimed	1,404	8⁴
Out-of-Pocket Losses (\$)	\$3,396,347.51	\$3,188.75
Total (\$)	\$8,904,451.03	\$5,511,292.27

VII. EXCLUSIONS AND OBJECTIONS

16. ***Exclusions (Opt-Outs) Received.*** EisnerAmper has received nine (9) exclusion requests from a Settlement Class Member as of December 4, 2024. The deadline to submit a request for exclusion expired on November 26, 2024. A list of the individuals who have timely requested exclusion from the Settlement is attached as **Exhibit B**.

² This total assumes court approval of Plaintiffs' requested attorneys' fees and litigation expenses and administrative costs as outlined in paragraph 18.

³ This total assumes court approval of Plaintiffs' requested attorneys' fees and litigation expenses and administrative costs as outlined in paragraph 18.

⁴ Only 53 of the 1,404 claims submitted for Out-of-Pocket Losses provided supporting documentation. Of the 53 claims that provided supporting documentation, only 8 claims contained valid documentation for partial or full approval of the amount claimed.

17. ***Settlement Objections.*** The Settlement Agreement directed objections be submitted to the Court. EisnerAmper has not received any objections from Settlement Class Members as of December 4, 2024. The deadline to object to the Settlement expired on November 26, 2024.

VIII. NOTICE AND ADMINISTRATION COSTS

18. ***Costs of Notice Program.*** EisnerAmper has incurred \$335,161.56 in fees and costs completing the notice plan and administering the Settlement and anticipates incurring an additional \$63,146.57 in fees and costs for a total administration cost of \$398,308.14.

IX. CONCLUSION

The methods of notice dissemination implemented by this Settlement, and the Court's Preliminary Approval Order, provided effective notice of the Settlement, exceeded the minimum standards set forth in the Federal Judicial Center's (FJC) guidance, and afforded enough time to provide full and proper notice to Settlement Class Members before the Claims, Opt-Out, and Objection Deadlines.

X. CERTIFICATION

I, Jordan Turner, declare under the penalty of perjury under the laws of the State of Georgia that the foregoing is true and correct. Executed on this 5th day of December 2024 at Houston, Texas.



Jordan Turner

Exhibit A

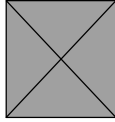
If you were sent a notice of data breach letter from a customer of Elekta, Inc. and/or Northwestern Memorial Healthcare, you are entitled to submit a claim for monetary compensation under a class action settlement.

A Federal Court has authorized this Notice. This is not a solicitation from a lawyer.

Who Is A Class Member? In the lawsuit *Tracy v. Elekta, Inc.*, No. 1:21-cv-02851 (N.D. Ga.), you are a class member if you were subject to, and previously were sent a Notice Letter notifying you of, the Security Incident that Elekta, Inc. (“Elekta”) discovered in April 2021 (the “Settlement Class”). There are approximately 497,800 Settlement Class Members whose Sensitive Information has been impacted in the April 2021 Data Incident.

For more information please visit www.elektadatasettlement.com or call 1-844-377-6369.

Tracy v. Elekta, Inc. Settlement Administrator
P.O. Box 1429
Baton Rouge, LA 70821



ELECTRONIC SERVICE REQUESTED



SETTLEMENT CLAIM ID: [claim id]
[FIRST NAME] [LAST NAME]
[ADDRESS1]
[ADDRESS2]
[CITY] [STATE] [ZIP]



WHAT ARE THE SETTLEMENT BENEFITS AND TERMS? Under the Settlement, Elekta and Northwestern Memorial Healthcare ("NMH") (collectively "Defendants") have agreed to pay \$8,900,000 into a Qualified Settlement Fund which will be distributed to Class Members who submit valid claims, after deducting class counsel's court-approved attorneys' fees and expenses, and settlement administration notice and administration costs, if such award is approved by the Court. All Class Members may submit claims to receive one of two types of Cash Payments – a pro rata Illinois Genetic Privacy Act Payment ("GIPA Payment") or a Pro Rata Cash Payment. In addition to these cash payments, Class Members who believe they suffered out-of-pocket losses as a result of the Data Incident may claim up to \$5,000 for the reimbursement of sufficiently documented expenses. Defendants have also agreed to implement or continue a series of business practices to limit the likelihood of a future cyberattack. More information about the types of Claims and how to file them is available at the Settlement Website, www.elektadatasettlement.com.

WHAT ARE YOUR RIGHTS AND OPTIONS?

Submit a Claim Form To qualify for a cash payment, you must timely mail a Claim Form that is attached to this notice or timely complete and submit a Claim Form online at www.elektadatasettlement.com. Your Claim Form must be postmarked or submitted online no later than **December 26, 2024**.

Your Other Options If you do nothing, you will remain in the class, you will not be eligible for benefits, and you will be bound by the decisions of the Court and give up your rights to sue

Defendant for the claims resolved by this settlement. If you do not want to be legally bound by the settlement, you must **exclude yourself by November 26, 2024**, if you stay in the settlement, you may **object** to it by **November 26, 2024**. A more detailed notice is available to explain how to exclude yourself or object. Please visit the Settlement Website or call 1-844-377-6369 for a copy of the more detailed notice.

The Final Approval Hearing. The Court will hold a Final Approval Hearing on **January 6, 2025 at 2:00 P.M.** You or your attorney may attend and ask to appear at the hearing, but you are not required to do so.

Who Represents Me? Class Counsel are Brian Bleichner, Chestnut Cambrome PA, and Terence R. Coates, Markovits, Stock & DeMarco, LLC.

Do I have any obligation to pay attorneys' fees or expenses? No. The attorneys' fees and expenses will be paid exclusively from the Settlement Fund as awarded and approved by the Court. The attorneys' fees will be in an amount not to exceed 1/3 of the \$8,900,000 Settlement Fund (i.e. no more than \$2,966,666.66) and also reasonable costs and expenses actually incurred. The motion for attorneys' fees and expenses will be posted on the Settlement Website after it is filed with the Court.

More Information. Complete information about your rights and options, as well as the Claim Form, the Long Notice, and Settlement Agreement, are available at www.elektadatasettlement.com, or by calling toll free 1-844-377-6369.

This Notice is a summary of the proposed settlement.

www.elektadatasettlement.com

1-844-377-6369

Business Reply Mail Content

Claims must be postmarked, or submitted online, no later than December 26, 2024.
Contact Information (Please fill in completely.)

Name: _____

Address: _____

Email Address: _____

Monetary Compensation (You may claim one pro rata cash payment and/or payment for Out-of-Pocket Losses)

- 1. **Pro Rata Cash Payment:** Would you like to receive a cash payment under the Settlement? Yes No
- 2. **Which Cash Payment are you eligible to receive?** **GIPA Pro Rata Cash Payment**** **Pro Rata Cash Payment**

**You must be an Illinois resident to select the GIPA Pro Rata Cash Payment. By selecting the GIPA Cash Payment, you attest that you have shared your genetic information with Defendant NMH or an Elekta Customer located in Illinois. Genetic Information, as defined under the Illinois Genetic Information Protection Act, 410 ILCS 513, includes an individual's genetic tests, manifestation of a genetic disease or disorder, any request or receipt of genetic services (counseling, obtaining, interpreting, or assessing genetic information), and participation in clinical research, but excludes information about sex or age.

Select from one of the following payment options:

- *PayPal _____ *Venmo _____ *Zelle _____ *Virtual Prepaid Card _____ (requires an email address) Check _____
- *Please provide your email address or phone number associated with your PayPal, Venmo or Zelle account, or email address for the Virtual Prepaid card: _____

3. **Verified Out-of-Pocket Losses:** \$ _____ (not more than \$5,000.00)

I understand that I am required to provide supporting third-party documentation and to support my claim for out-of-pocket losses, such as providing copies of any receipts, bank statements, reports, or other documentation supporting my claim. I understand this can include receipts or other documentation not "self-prepared." I understand that "self-prepared" documents such as handwritten receipts are, by themselves, insufficient to receive reimbursement, but can be considered to add clarity or support other submitted documentation. I understand the settlement administrator may contact me for additional information before processing my claim. I understand that if I lack information supporting my claim for out-of-pocket losses, I will not receive compensation for this settlement benefit. I understand any monetary compensation I may receive for Out-of-Pocket Losses under the settlement is capped at \$5,000.00.

By signing my name below, I swear and affirm that the information included on this Claim Form is true and accurate, and that I am completing this claim form to the best of my personal knowledge.

Signature: _____ Date (mm/dd/yyyy): _____ Print Name: _____

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT
UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF GEORGIA**

Tracy v. Elekta, Inc., Case No. 1:21-cv-02851

A court has authorized this notice. This is not a solicitation from a lawyer.

If You Previously Were Sent a Notice Letter Notifying You of a Data Security Incident Impacting Elekta, Inc. and its customers, including Northwestern Memorial Healthcare, You Could be Eligible for a Payment from a Class Action Settlement

- You may be eligible to receive a payment from a proposed \$8,900,000 non-reversionary class action settlement (the “Qualified Settlement Fund”).
- The class action lawsuit concerns a data security incident that occurred in April 2021 (the “Data Security Incident”) involving Elekta, Inc. (“Elekta”) in which an unauthorized third party may have gained access to certain files containing sensitive personal information concerning patients of Elekta’s customers (“Elekta’s Customers”), including Defendant Northwestern Memorial Healthcare (“NMH”) stored on Elekta’s networks, including names, Social Security numbers, dates of births, addresses, clinical information related to treatments, medical record numbers, medical histories, dates of service, treatment plans, physician names, diagnosis, prescription information, health insurance information, and genetic information (“Sensitive Information”). Elekta and NMH (collectively, “Defendants”) deny any wrongdoing and denies they have any liability but has agreed to settle the lawsuit on a classwide basis.
- To be eligible to make a claim, you must have received a letter about data security incident that occurred in April 2021.
- Eligible claimants under the Settlement Agreement will be eligible to receive one and/or two of the following Settlement benefits:

❖ **Out-of-Pocket Loses: Reimbursement for the actual amount of unreimbursed out-of-pocket losses or expenses up to \$5,000, with supporting documentation of the monetary losses or expenses;**

AND/OR

❖ **Cash Payment: A claimant can select one of the following cash payments, based upon eligibility:**

- **Illinois Genetic Information Privacy Act (“GIPA”) Cash Compensation (GIPA Cash Payment):** After the distribution of attorneys’ fees, Class Counsel’s Litigation Expenses, Administrative Fees, and Compensation for Out-of-Pocket Expenses, the Settlement Administrator will make pro rata settlement payments of 1/2 (50%) of any remaining funds to each Illinois GIPA Subclass Member who submits a claim for a GIPA Cash Payment. Any pro rata payment amount for the GIPA Cash Payment will be capped at \$1,000.00. **You must be an Illinois resident to select this option and must attest that you shared your genetic information with NMH or one of Elekta’s customers located in Illinois.**

OR

➤ Cash Compensation (Pro Rata Cash Payment): After the distribution of attorneys’ fees, Class Counsel’s Litigation Expenses, Administrative Fees, Compensation for Out-of-Pocket Expenses, the Settlement Administrator will make pro rata settlement payments of 1/2 (50%) of any remaining funds to each Class Member who submits a claim.

- For more information or to submit a claim visit www.elektadatasettlement.com or call 1-844-377-6369.
- **Please read this notice carefully. Your legal rights will be affected, and you have a choice to make at this time.**

	Summary of Legal Rights	Deadline(s)
Submit a Claim Form	The only way to receive payment.	Submitted or Postmarked on or Before December 26, 2024
Exclude Yourself By Opting Out of the Class	Receive no payment. This is the only option that allows you to keep your right to bring any other lawsuit against Defendants for the same claims if you are a Settlement Class Member.	Submitted or Postmarked on or Before November 26, 2024
Object to the Settlement and/or Attend the Final Approval Hearing	You can write to the Court about why you agree or disagree with the Settlement. The Court cannot order a different Settlement. You can also ask to speak to the Court at the Final Approval Hearing on January 6, 2025 , about the fairness of the Settlement, with or without your own attorney.	Received on or Before November 26, 2024
Do Nothing	Receive no payment. Give up rights if you are a Settlement Class Member.	No Deadline.

- Your rights and options as a Settlement Class Member – and the deadlines to exercise your rights – are explained in this notice.
- The Court still will have to decide whether to approve the Settlement. Payments to class members will be made if the Court approves the Settlement and after any possible appeals are resolved.

What This Notice Contains

Basic Information 3

Who is in the Settlement 3

The Settlement Benefits—What You Get if You Qualify 4

How do You Submit a Claim 5

What Do Defendants Get 5

Excluding Yourself from the Settlement 5,6

Objecting to the Settlement 6

The Lawyers Representing You 7

The Court’s Final Approval Hearing 8
If You Do Nothing 8
Getting More Information 8,9

BASIC INFORMATION

1. Why is there a notice?

The Court authorized this notice because you have a right to know about the Settlement, and all of your options, before the Court decides whether to give “final approval” to the Settlement. This notice explains the nature of the lawsuit that is the subject of the Settlement, the general terms of the Settlement, and your legal rights and options.

United States District Court Judge Steven D. Grimberg of the Northern District of Georgia is overseeing this case captioned as *Tracy v. Elekta, Inc.* Case No. 1:21- CV-02851. The people who brought the lawsuit are called the Plaintiffs. The Plaintiffs are Carla Tracy, Darryl Bowsky, and Deborah Harrington. The entities being sued, Elekta, Inc. and Northwestern Memorial Healthcare, are called the Defendants.

2. What is this lawsuit about?

The lawsuit claims that Defendants were legally responsible for the Data Security Incident and asserts claims such as negligence, negligence per se, breach of implied contract, and violations of the Illinois Genetic Information Privacy Act.

Defendants deny these claims and say they did not do anything wrong. No court or other judicial entity has made any judgment or other determination that Defendants have any liability for these claims or did anything wrong.

3. Why is this lawsuit a class action?

In a class action, one or more people called class representatives or representative plaintiffs sue on behalf of all people who have similar claims. Together, all of these people are called a class, and the individuals are called class members. One court resolves the issues for all class members, except for those who exclude themselves from the class.

4. Why is there a Settlement?

The Court has not decided in favor of the Plaintiffs or Defendants. Instead, both sides agreed to the Settlement. The Settlement avoids the cost and risk of a trial and related appeals, while providing benefits to members of the Settlement Class (“Settlement Class Members”). The Class Representatives appointed to represent the Settlement Class and the attorneys for the Settlement Class (“Class Counsel,” see Question 18) think the Settlement is best for all Settlement Class Members.

WHO IS IN THE SETTLEMENT?

5. How do I know if I am part of the Settlement?

You are affected by the Settlement and potentially a member of the Settlement Class if you reside in

the United States and your Sensitive Information was accessed or potentially accessed in connection with the Data Incident, including if you were mailed a notification letter regarding the Data Incident.

Only Settlement Class Members are eligible to receive benefits under the Settlement. Specifically excluded from the Settlement Class are (1) the judge presiding over the class action lawsuit and the judge's direct family members; (2) the Defendants, their subsidiaries, parent companies, successors, predecessors, and any entity in which the Defendants or their parents have a controlling interest, and their current or former officers, directors, and employees; and (3) Settlement Class Members who submit a valid request to be excluded from the Settlement.

6. What if I am not sure whether I am included in the Settlement?

If you are not sure whether you are included in the Settlement, you may call 1-844-377-6369 with questions. You may also write with questions to:

Elekta Data Settlement Administrator
P.O. Box 1429
Baton Rouge, LA 70821
www.elektadatasettlement.com

THE SETTLEMENT BENEFITS – WHAT YOU GET IF YOU QUALIFY

7. What does the Settlement provide?

The Settlement provides that Defendants will fund the following payments up to a total of \$8,900,000: (a) up to \$5,000 for reimbursement of your documented Out-of-Pocket Losses reasonably traceable to the Data Incident; (b) an estimated GIPA cash payment, subject to an adjustment, and/or (c) an estimated pro rata payment, subject to adjustment as set forth below.

Claimants must choose which cash payment they are eligible to receive:

- (a) GIPA Cash Compensation (GIPA Cash Payment):** After the distribution of attorneys' fees, Class Counsel's Litigation Expenses, Administrative Fees, and Compensation for Out-of-Pocket Expenses, the Settlement Administrator will make *pro rata* settlement payments of 1/2 (50%) of any remaining funds to each Illinois GIPA Subclass Member who submits a claim for GIPA cash compensation. Any pro rata payment amount for the GIPA Cash Payment will be capped at \$1,000.00. **You must be an Illinois resident to select this option and must attest that you shared your genetic information with either Defendant.**

OR

- (b) Cash Compensation (Pro Rata Cash Payment):** After the distribution of attorneys' fees, Class Counsel's Litigation Expenses, Administrative Fees, and Compensation for Out-of-Pocket Expenses, the Settlement Administrator will make *pro rata* settlement payments of 1/2 (50%) of any remaining funds to each Class Member who submits a Pro Rata Cash Payment claim plus any amount remaining under section (a) to the extent that the GIPA Cash Payments reach the \$1,000 cap.

Also, as part of the Settlement, Defendants either have undertaken or will undertake certain reasonable steps to further secure their systems and environments.

8. What payments are available for reimbursement under the Settlement?

Settlement Class Members who submit a claim are eligible to receive one or both of the following:

- a) Reimbursement of actual, documented, unreimbursed Out-of-Pocket Losses resulting from the Data Security Incident (up to \$5,000 in total), such as the following incurred on or after April 1, 2021:
 - Unreimbursed payment card fees or unreimbursed bank fees, including unreimbursed card reissuance fees, unreimbursed overdraft fees, unreimbursed charges related to unavailability of funds, unreimbursed late fees, unreimbursed over-limit fees and unreimbursed fees relating to an account being frozen or otherwise unavailable due to the Data Security Incident;
 - Cell, internet or text charges;
 - Unreimbursed costs or charges for obtaining credit reports or credit freezes incurred on or after May 2021 through the date of the Settlement Class Member's claim submission before the Claims Deadline;
 - Other unreimbursed costs associated with fraud and/or identity theft, including attorneys' fees and accountant fees; and,
 - Postage costs.

- b) A cash payment of one of the following types:
 - **Cash Compensation (GIPA Cash Payment):** After the distribution of attorneys' fees, Class Counsel's Litigation Expenses, Administrative Fees, and Compensation for Out-of-Pocket Expenses, the Settlement Administrator will make pro rata settlement payments of 1/2 (50%) of any remaining funds to each Illinois GIPA Subclass Member who submits a claim for GIPA cash compensation. Any pro rata payment amount for the GIPA Cash Payment will be capped at \$1,000.00. **You must be an Illinois resident to select this option and must attest that you shared your genetic information with Defendant NMH or any Elekta Customer located in Illinois.**

OR

- **Cash Compensation (Pro Rata Cash Payment):** After the distribution of attorneys' fees, Class Counsel's Litigation Expenses, Administrative Fees, and Compensation for Out-of-Pocket Expenses, the Settlement Administrator will make pro rata settlement payments of 1/2 (50%) of any remaining funds to each Class Member who submits a claim plus any amount remaining under section (a) to the extent that the GIPA Cash Payments reach the \$1,000.00 cap.

HOW DO YOU SUBMIT A CLAIM?

9. How do I get a benefit?

To receive a benefit under the Settlement, you must complete and submit a claim for that benefit (a "Claim"). Every Claim must be made on a form ("Claim Form") available at www.elektadatasettlement.com or by calling 1-844-377-6369. Claim Forms will also be sent to Settlement Class Members as part of the postcard notice and tear-off claim form that will be mailed

to Settlement Class Members. Read the instructions carefully, fill out the Claim Form, provide the required documentation, and submit it according to the instructions on the Claim Form.

10. How will claims be decided?

The Settlement Administrator will decide whether and to what extent any Claim made on each Claim Form is valid. The Settlement Administrator may require additional information. If you do not provide the additional information in a timely manner then the Claim will be considered invalid and will not be paid.

11. When will I get my payment?

The Court will hold a Final Approval Hearing on **January 6, 2025, at 2:00 p.m. ET** to decide whether to approve the Settlement. If the Court approves the Settlement, there may be appeals from that decision and resolving those can take time, perhaps more than a year. It also takes time for all the Claim Forms to be processed. Please be patient.

WHAT DO THE DEFENDANTS GET?

12. What am I giving up as part of the Settlement?

The Defendants get a release from all claims covered by this Settlement. Thus, if the Settlement becomes final and you do not exclude yourself from the Settlement, you will be a Settlement Class Member and you will give up your right to sue Defendants and other persons (“Released Parties”) as to all claims (“Released Claims”) arising out of or relating to the Data Incident. This release is described in the Settlement Agreement, which is available at www.elektadatasettlement.com. If you have any questions you can talk to the law firms listed in Question 18 for free or you can talk to your own lawyer.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want to be part of this Settlement, then you must take steps to exclude yourself from the Settlement Class. This is sometimes referred to as “opting out” of the Settlement Class.

13. If I exclude myself, can I get a payment from this Settlement?

No. If you exclude yourself, you will not be entitled to receive any benefits from the Settlement, but you will not be bound by any judgment in this case.

14. If I do not exclude myself, can I sue Defendants for the same thing later?

No. Unless you exclude yourself, you give up any right to sue Defendants (and any other Released Parties) for the claims that this Settlement resolves. You must exclude yourself from the Settlement Class to start your own lawsuit or to be part of any different lawsuit relating to the claims in this case. If you want to exclude yourself, do not submit a Claim Form to ask for any benefit under the Settlement.

15. How do I exclude myself from the Settlement?

To exclude yourself, send a letter that says you want to be excluded or opt-out from the Settlement

in *Tracy v. Elekta, Inc.* Case No. 1:21- CV-02851 (N.D. GA). The letter must: (a) state your full name, address, and telephone number; (b) contain your personal and original signature or the original signature of a person authorized by law to act on your behalf; and (c) state unequivocally your intent to be excluded from the Settlement. You must mail your exclusion request postmarked by **November 26, 2024**, to:

Elekta Data Settlement Administrator
Attn: Exclusion Request
P.O. Box 1429
Baton Rouge, LA 70821

OBJECTING TO THE SETTLEMENT

16. How do I tell the Court that I do not like the Settlement?

You can tell the Court that you do not agree with the Settlement or some part of it by objecting to the Settlement. The Court will consider your views in its decision on whether to approve the Settlement. The Court can only approve or deny the Settlement and cannot change its terms. To object, timely written notice of an objection in the appropriate form must be filed with or submitted to the Clerk of the Court on or before the Objection Deadline: **November 26, 2024**. The address for the Clerk of Court is U.S. District Court Clerk's Office, Richard B. Russell Federal Building & United States Courthouse, 2211 United States Courthouse, 75 Ted Turner Drive, SW, Atlanta, GA 30303-3309.

Your objection must be written and must include all of the following: i) the objector's full name, address, telephone number, and email address (if any); (ii) information identifying the objector as a Settlement Class Member, including proof that the objector is a member of the Settlement Class (e.g., copy of notice or copy of original notice of the Data Incident); (iii) a written statement of all grounds for the objection, accompanied by any legal support for the objection the objector believes applicable; (iv) the identity of all counsel representing the objector; (v) the identity of all counsel representing the objector who will appear at the Final Approval Hearing; (vi) a list of all Persons who will be called to testify at the Final Approval Hearing in support of the objection; (vii) a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and (viii) the objector's signature and the signature of the objector's duly authorized attorney or other duly authorized representative, along with documentation setting forth such representation.

17. What is the difference between objecting and asking to be excluded?

Objecting is telling the Court that you do not like the Settlement and why you do not think it should be approved. You can object only if you are a Settlement Class Member. Excluding yourself is telling the Court that you do not want to be part of the Settlement Class and do not want to receive any payment or benefit from the Settlement. If you exclude yourself, then you have no basis to object because you are no longer a member of the Settlement Class and the case no longer affects you. If you submit both a valid objection and a valid request to be excluded, you will be deemed to have only submitted the request to be excluded.

THE LAWYERS REPRESENTING YOU

18. Do I have a lawyer in this case?

Yes. The Court appointed Bryan L. Bleichner of Chestnut Cambronne PA, and Terence R. Coates of

Markovits, Stock & DeMarco, LLC. Mr. Bleichner may be contacted at 100 Washington Avenue South, Suite 1700, Minneapolis, MN 55401; Email: BBleichner@chestnutcambronne.com. Mr. Coates may be contacted at 119 E. Court Street Suite 530, Cincinnati, OH 45202; Email: msd@msdlegal.com.

If you want to be represented by your own lawyer, then you may hire one at your own expense.

19. How will the lawyers be paid?

Class Counsel will ask the Court for an award for attorneys' fees up to one-third of the Qualified Settlement Fund (\$2,966,666.66), plus reimbursement of reasonable litigation expenses. Defendants have not agreed to the amount of any award of attorneys' fees, costs, and expenses. Any payment for attorneys' fees, costs, and expenses to Class Counsel will be made out of the Qualified Settlement Fund. Any such award would compensate Class Counsel for investigating the facts, litigating the case, and negotiating the Settlement and will be the only payment to them for their efforts in achieving this Settlement and for their risk in undertaking this representation on a wholly contingent basis.

Any award for attorneys' fees, costs, and expenses for Class Counsel must be approved by the Court. The Court may award less than the amount requested. Class Counsel's papers in support of final approval of the Settlement will be filed no later than December 6, 2024 and their application for attorneys' fees, costs, and expenses will be filed no later than November 12, 2024 and will be posted on the settlement website.

THE COURT'S FINAL APPROVAL HEARING

20. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing at 2:00 p.m. EST on January 6, 2025, at the U.S. District Court Clerk's Office, Richard B. Russell Federal Building & United States Courthouse, 2211 United States Courthouse, 75 Ted Turner Drive, SW, Atlanta, GA 30303, or by remote or virtual means as ordered by the Court. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are timely and valid objections, then the Court will consider them and will listen to people who have asked to speak at the hearing if such a request has been properly made. The Court will also rule on the request for an award of attorneys' fees, and reasonable costs and expenses. After the hearing the Court will decide whether to approve the Settlement. We do not know how long these decisions will take. The hearing may be moved to a different date or time without additional notice, so Class Counsel recommends checking www.elektadatasettlement.com or calling 1-844-377-6369.

21. Do I have to attend the hearing?

No. Class Counsel will present the Settlement Agreement to the Court. You or your own lawyer are welcome to attend at your expense, but you are not required to do so. If you send an objection, you do not have to visit the Court to talk about it. As long as you filed your written objection on time with the Court and mailed it according to the instructions provided in Question 16, the Court will consider it.

22. May I speak at the hearing?

You may ask the Court for permission to speak at the final approval hearing. To do so, you must file an objection according to the instructions in Question 16, including all the information required. Your objection must be **filed with and/or submitted to** the Clerk of the Court no later than November 26, 2024. See No. 16 for further details on the requirements for submitting an objection to the Settlement.

IF YOU DO NOTHING

23. What happens if I do nothing?

If you do nothing you will not get any money from this Settlement. If the Settlement is granted final approval and the judgment becomes final, then you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Defendants and the other Released Parties based on any of the Released Claims related to the Data Incident, ever again.

GETTING MORE INFORMATION

24. How do I get more information?

This notice summarizes the proposed Settlement. More details are in the Settlement Agreement itself. A copy of the Settlement Agreement is available at **www.elektadatasettlement.com**. You may also call the Settlement Administrator with questions or to receive a Claim Form at 1-844-377-6369.

This Notice is approved by the United States District Court for the Northern District of Georgia. **DO NOT CONTACT THE COURT DIRECTLY IF YOU HAVE QUESTIONS ABOUT THE SETTLEMENT.** Please contact the Settlement Administrator or Class Counsel if you have any questions about the Settlement.

CLAIM FORM

Tracy v. Elekta, Inc.

Case No. 1:21-cv-02851

United States District Court, Northern District of Georgia

SUBMIT BY December 26, 2024

ONLINE AT WWW.ELEKTADATASETTLEMENT.COM

OR MAIL TO:

Elekta Data Settlement Administrator

P.O. Box 1429

Baton Rouge, LA 70821

GENERAL CLAIM FORM INFORMATION

This Claim Form should be filled out online or submitted by mail if you received a notice of data security incident letter stating your personal information was potentially compromised in connection with a Data Security Incident impacting Elekta, Inc. (“Elekta”) in April 2021 (“Settlement Class”). Your notice was sent from Northwestern Memorial Healthcare (“NMH”) or another Elekta customer (“Elekta’s Customers) in or around May 2021.

If you wish to submit a Claim by mail, please provide the information requested below. Please print clearly in blue or black ink. This Claim Form must be mailed and postmarked by **no later than December 26, 2024**.

Monetary Compensation

Cash Payment: Would you like to receive a cash payment under the Settlement? (**circle one**)

Yes

No

*If you selected yes, you must choose which cash payment you are eligible to receive. If you do not select an option, you will be deemed to have selected the Pro Rata Cash Payment. If you select the Illinois Genetic Information Privacy Act (“GIPA”) Cash Payment and are not an Illinois resident, your claim will be denied.

(a) **GIPA Cash Compensation (GIPA Cash Payment):** After the distribution of attorneys’ fees, Class Counsel’s Litigation Expenses, Administrative Fees, and Compensation for Out-of-Pocket Expenses, the Settlement Administrator will make *pro rata* settlement payments of 1/2 (50%) of any remaining funds to each Illinois GIPA Subclass Member who submits a claim for GIPA cash compensation. Any pro rata payment amount for the GIPA Cash Payment will be capped at \$1,000.00. **You must be a current or former Illinois resident to select this option and must attest that you shared your genetic information with NMH or an Elekta Customer located in Illinois.**

(b) **Cash Compensation (Pro Rata Cash Payment):** After the distribution of attorneys’ fees, Class Counsel’s Litigation Expenses, Administrative Fees, and Compensation for Out-of-Pocket Expenses, the Settlement Administrator will make *pro rata* settlement payments of 1/2 (50%) of

any remaining funds to each Class Member who submits a claim plus any amount remaining under section (a) to the extent that the GIPA Cash Payments reach the \$1,000.00 cap.

Which Cash Payment are you eligible to receive? (circle one)

GIPA Cash Payment**

Pro Rata Cash Payment

**By selecting the GIPA Cash Payment, you attest that you have shared your genetic information with NMH or one of Elekta’s Customers located in Illinois. Genetic Information, as defined under the Illinois Genetic Information Protection Act, 410 ILCS 513, includes genetic tests, manifestation of a genetic disease or disorder, any request or receipt of genetic services (counseling, obtaining, interpreting, or assessing genetic information), and participation in clinical research, but excludes information about sex or age.

Out-of-Pocket Losses (if any): I am submitting a claim for documented unreimbursed out-of-pocket monetary losses in the amount of \$_____ that I incurred as a result of the Data Security Incident. I understand that I am required to provide supporting third-party documentation and to support my claim for out-of-pocket losses, such as providing copies of any receipts, bank statements, reports, or other documentation supporting my claim. This can include receipts or other documentation that I have not “self-prepared.” I understand that “self-prepared” documents such as handwritten receipts are, by themselves, insufficient to receive reimbursement, but can be considered to add clarity or support other submitted documentation. I understand the settlement administrator may contact me for additional information before processing my claim. If I do not have information supporting my claim for unreimbursed monetary losses, I likely will not receive compensation for this settlement benefit. **I understand that any monetary compensation I may receive under the settlement is capped at \$5,000.00 for out-of-pocket expenses.**

Description of the unreimbursed, out-of-pocket loss or expenses incurred, and the documents attached to support this claim:

Please sign below indicating that you are submitting this Claim for Out-of-Pocket Losses and your representations of these losses are true and correct to the best of your knowledge and belief, and are being made under penalty of perjury.

Signature _____

Date _____

Claimant Information

Full Name of Class Member

Settlement Claim ID *(Can be found on the postcard or Email Notice you received informing you about this Settlement. If you need additional help locating this ID, please contact the Settlement Administrator.)*

Street/P.O. Box

City

State

Zip Code

Phone Number

Email Address

Signature

Exhibit B

Exclusion Requests*Tracy v. Elekta, Inc.*, Case No. 1:21-cv-02851

Count	First Name	Last Initial	City	State	Postmark Date
1	Grace	G	Las Vegas	NV	10/2/2024
2	Cynthia	C	Oakland Park	IL	10/3/2024
3	Sean	C	Union City	CA	10/5/2024
4	Charlene	P	Doylestown	PA	10/9/2024
5	Philip	C	Chicago	IL	10/11/2024
6	Colleen	P	Mooreville	IN	10/24/2024
7	Gary	T	Seabeck	WA	10/24/2024
8	Nidhie	S	Irvine	CA	11/23/2024
9	Anne	W	Berwyn	IL	11/26/2024

EXHIBIT

2

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

CARLA TRACY, DARRYL
BOWSKY, and DEBORAH
HARRINGTON, individually and
*on behalf of all others similarly
situated,*

Plaintiffs,

v.

ELEKTA, INC., and
NORTHWESTERN MEMORIAL
HEALTHCARE,

Defendants.

Judge Steven D. Grimberg

Case No. 1:21-cv-02851

**[PROPOSED] ORDER GRANTING FINAL APPROVAL
OF CLASS ACTION SETTLEMENT**

Before this Court is Plaintiffs' Unopposed Motion for Final Approval of Class Action Settlement (ECF No. 89) and Plaintiffs' Motion for Attorneys' Fees and Reimbursement of Litigation Expenses (ECF No. 88). The Court has reviewed the Motion and Memorandum in Support of Final Approval, and the Settlement Agreement [ECF No. 84-1] ("Settlement Agreement")¹ entered into between

¹ Defined terms, not defined herein, have the meaning defined in the Settlement Agreement [ECF No. 84-1].

Plaintiffs Carla Tracy, Darryl Bowsky, and Deborah Harrington both individually and on behalf of the Settlement Class and Defendants Elekta, Inc. (“Elekta”) and Northwestern Memorial Healthcare (“NWM”) (collectively “Defendants”). After reviewing Plaintiffs’ Unopposed Motion for Final Approval of Class Action Settlement, the Court concludes the Settlement consisting of an \$8,900,000 non-reversionary common fund is fair, reasonable, and adequate. Plaintiffs’ Motion is hereby **GRANTED**.

1. For purposes of this Final Judgment, adopts the defined terms as set forth in the Settlement Agreement for any term not otherwise defined herein.

2. On August 28, 2024, the Court entered an Order Granting Preliminary Approval of Class Action Settlement [ECF No. 85] (“Preliminary Approval Order”) that preliminarily approved the Settlement Agreement and established a hearing date to consider the final approval of the Settlement Agreement and Plaintiffs’ Motion for Attorneys’ Fees.

3. The Court’s Preliminary Approval Order approved the Short Form Settlement Notice, Long Form Notice, Claim Form, and found the direct mailing distribution, met the requirements of Fed. R. Civ. P. 23 and due process, and was the best notice practicable under the circumstances, constituting due and sufficient notice to all persons entitled to notice.

IT IS HEREBY ORDERED:

4. The Settlement Agreement is fair, reasonable, and adequate, as expressed further herein. The Court also finds the Settlement Agreement was entered into in good faith, at arm's length, and without collusion. The Court approves and directs consummation of the Settlement Agreement.

5. The Court has and reserves jurisdiction over the Settlement Agreement, and for purposes of the Settlement, the Court has and reserves jurisdiction over the Parties to the Settlement.

6. There is no just reason for delay of entry of final judgment with respect to the foregoing.

7. Plaintiffs' claims are dismissed with prejudice, including all claims of the Class against Defendants, without costs and fees except as explicitly provided for in the Settlement Agreement.

8. There have been no objections to the settlement filed with the Court, nor have any been received by the Settlement Administrator. (Declaration of Settlement Administrator, ¶ 17, ECF No. 89-1).

9. The distribution, form, and content of the Notice has been achieved pursuant to the Preliminary Approval Order and the Settlement Agreement, and Notice to Class Members complied with Fed. R. Civ. P. 23 and due process.

10. Defendants have complied with the requirements of 28 U.S.C. § 1715 regarding the CAFA Notice.

11. The Court appoints Class Counsel as provided in the Preliminary Approval Order, appointing Terence R. Coates of Markovits, Stock & DeMarco, LLC, and Bryan L. Bleichner of Chestnut Cambronne PA as Class Counsel.

12. Plaintiffs Carla Tracy, Darryl Bowsky, and Deborah Harrington are appointed as Class Representatives. The Court finds that the Class Representatives are similarly situated to absent Class Members, are typical of the Class, and are adequate Class Representatives. The Court further finds that Class Counsel and the Class Representatives have fairly and adequately represented the Class.

13. The Court certifies the following Classes for settlement purposes under Fed. R. Civ. P. 23(a) and 23(b)(3), subject to the Class exclusions set forth in the Settlement Agreement:

The Nationwide Class:

All persons residing in the United States who had their Sensitive Information hosted by Elekta compromised as a result of the Data Security Incident.

The Illinois GIPA Subclass:

All persons residing in the State of Illinois who had Genetic Information hosted by Elekta compromised as a result of the Data Security Incident.

14. The Court finds that the Classes defined above satisfy the requirements of Fed. R. Civ. P. 23(a) and 23(b)(3) for settlement purposes because: (a) the Class consists of approximately 489,932 Settlement Class Members and is so numerous that joinder of all Class Members would be impracticable; (b) there are issues of law and fact that are common to the Classes; (c) the claims of the Class Representatives are typical of and arise from the same operative facts and seek similar relief as the claims of the Class Members; (d) the Class Representatives and Class Counsel have fairly and adequately protected the interests of the Classes, and the Class Representatives have no interests antagonistic to, or in conflict with, the absent Class Members and have retained experienced and competent Class Counsel to prosecute this matter on behalf of the Classes; (e) questions of law or fact common to Class Members predominate over any questions affecting individual class members; and (f) a class action and class settlement are superior to other methods available for a fair and efficient resolution of this controversy.

15. The Court grants Plaintiff's Motion for Attorneys' Fees and Litigation Expenses [ECF No. 88]. The Court awards Class Counsel \$2,966,666.67 in attorneys' fees and reimbursement of litigation expenses of \$23,688.19 to be paid according to the terms of the Settlement Agreement. These amounts for attorneys' fees and reimbursement of litigation expenses are fair and reasonable.

16. The Court, having considered the negotiation of, terms of, and all materials submitted concerning the Settlement Agreement; having considered Plaintiffs' and the Classes' likelihood of success both of maintaining this action as a class action and of prevailing on the claims at trial, including the possibility that Defendants could prevail on one or more of its defenses, having considered the range of the Plaintiffs' possible recovery (and that of the Class) and the complexity, expense, and duration of the litigation; and having considered the substance and amount of opposition to the proposed settlement, it is hereby determined that:

- a. Plaintiffs and Class Counsel have adequately represented the proposed Classes;
- b. The terms of the Settlement Agreement were negotiated at arm's length with vigorous advocacy by experienced counsel for both Plaintiffs and Defendants;
- c. The outcome and uncertainty of the litigation, including class certification and potential summary judgment motions, existed when the Settlement was reaching making the compromise under the Settlement Agreement fair and reasonable under the circumstances;

- d. The value of immediate recovery outweighs the possibility of future relief that would likely occur, if at all, only after further protracted litigation, trial and possible appeals;
- e. The Parties have in good faith determined the Settlement Agreement is in their respective best interests, including both Plaintiffs and Class Counsel determining that it is in the best interest of Class Members;
- f. The aggregate consideration for the Classes – including the Settlement Fund, funded by Elekta – is commensurate with the claims asserted and being released as part of the Settlement; and
- g. The terms of the Settlement Agreement treat the Class Members equitably relative to each other and fall within the range of settlement terms that would be considered a fair, reasonable, and adequate resolution of the litigation.

17. Therefore, pursuant to Rule 23(e), the terms of the Settlement Agreement are finally approved as fair, reasonable, and adequate as to, and in the best interest of, the Classes and each of the Class Members. Class Members who did not opt-out of the Settlement are bound by this Final Approval Order. The Settlement Agreement and its terms shall have *res judicata* and preclusive effect in all pending

and future lawsuits or other proceedings as to Released Claims and waivers applicable thereto.

18. The Court approves the distribution and allocation of the Settlement Fund under the Settlement Agreement. To the extent that any funds remain in the Qualified Settlement Fund more than one-hundred twenty (120) days after distribution of the Settlement Payments, those funds will be distributed to a court-approved Non-Profit Residual Recipient as a *cypres* distribution subject to the terms of the Settlement Agreement and Court approval.

19. This Final Approval Order, and all statements, documents, or proceedings relating to the Settlement Agreement are not, and shall not be construed as, used as, or deemed to be evidence of, an admission by or against Defendants of any claim, any fact alleged in the litigation, any fault, any wrongdoing, any violation of law, or any liability of any kind on the part of Defendants or of the validity or certifiability for this litigation or other litigation of any claims or class that have been, or could have been, asserted in the litigation.

20. Notwithstanding the above, the Settlement Agreement and this Final Approval Order may be filed in any action by Defendants, Class Counsel, or Class Members seeking to enforce the Settlement Agreement or the Final Approval Order.

21. The Settlement Agreement and Final Approval Order shall not be construed or admissible as an admission by Defendants that Plaintiffs' claims or any similar claims are suitable for class treatment.

SO ORDERED THIS ___ DAY OF _____, 2025.

Hon. Steven D. Grimberg
United States District Judge