SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

AVA HOFFMAN, SHANTE PIERRO, and DANIELA ZAMOR, individually and on behalf of all others similarly situated, Plaintiffs, v. FITON INC., Defendant.	Index No. 542301/2025

CLASS ACTION SETTLEMENT AGREEMENT

This Agreement ("Agreement" or "Settlement Agreement") is entered into by and among (i) Plaintiffs Ava Hoffman, Shante Pierro, and Daniela Zamor (the "Plaintiffs"); (ii) the Settlement Class; and (iii) Defendant FitOn Inc. ("Defendant"). Plaintiffs and the Defendant are collectively referred to herein as the "Parties." This Agreement is intended by the Parties to fully, finally and forever resolve, discharge, and settle the Released Claims, upon and subject to the terms and conditions of this Agreement, and subject to the final approval of the Court.[1]

RECITALS

A. A putative class action was filed on October 22, 2024, in the United States District Court for the Central District of California. The material allegations of the complaint center on Defendant's alleged disclosure of its subscribers' personally identifiable information to third parties without permission in violation of the Video Privacy Protection Act, 18 U.S.C. § 2710 et seq. (the "VPPA") and an alleged violation of the California Invasion of Privacy Act, , Cal. Pen. Code § 630 *et seq*. ECF No. 1.

[1] All capitalized terms have the meaning assigned to them as defined herein, including those in the definition paragraphs of the Agreement.

B. On October 23, 2024, the case was assigned to District Judge Dolly M. Gee and Magistrate Judge Alka Sagar. ECF No. 6.

C. On November 4, 2024, the court ordered the case to be transferred to District Judge Fernando M. Olguin and Magistrate Judge Patricia Donahue for all further proceedings. ECF No. 12.

D. On December 23, 2024, the Parties jointly stipulated to extend Defendant's time to respond to Plaintiffs' initial Complaint by 21 days, up to and including January 17, 2025. ECF No. 14.

E. On January 17, 2025, Defendant filed a Motion to Dismiss Plaintiffs' initial Complaint. ECF No. 16.

F. On January 28, 2025, Plaintiffs filed a First Amended Complaint. ECF No. 21.

G. On February 2, 2025, the Parties jointly stipulated to extend Defendant's time to respond to Plaintiffs' First Amended Complaint by 21 days, up to and including March 4, 2025. ECF No. 23.

H. On March 4, 2025, Defendant filed a Motion to Dismiss Plaintiffs' First Amended Complaint. ECF No. 33.

I. On March 20, 2025, Plaintiffs filed a Memorandum in Opposition to Defendant's Motion to Dismiss. ECF No. 35.

J. On March 27, 2025, Defendant filed a Reply in support of its Motion to Dismiss. ECF No. 36.

K. On April 4, 2025, the Court took the Motion to Dismiss off calendar and placed it under submission. ECF No. 37. The Court has not issued a ruling on Defendant's Motion to Dismiss.

L. On March 3, 2025, Plaintiffs served their First Set of Discovery Requests on Defendant. On May 7, 2025, Defendant served its First Set of Discovery Responses on Plaintiffs.

M. Pursuant to the Case Management Order, the Parties were ordered to "complete their settlement conference before a private mediator no later than August 14, 2025." ECF No. 29. The Parties agreed to mediate on July 17, 2025, with Andrew Nadolna of JAMS.

N. On May 22, 2025, the Court granted a stay of all case deadlines until July 24, 2025. ECF No. 41. A conflict arose making the original mediation date impossible and the Parties rescheduled the mediation for October 3, 2025. ECF No. 42. However, Andrew Nadolna of JAMS had an unexpected conflict and needed to cancel the mediation. ECF No. 44. On October 21, 2025, the Court ordered an extension of the stay of case management deadlines until November 6, 2025. ECF No. 45.

O. On November 4, 2025, the Parties attended a mediation with Michael Ungar, Esq. ECF No. 46.

P. As part of the mediation, and in order to competently assess their relative negotiating positions, the Parties exchanged informal discovery, including on issues such as the size and scope of the putative class, and certain facts related to the strength of Defendant's defenses and Plaintiffs' claims.

Q. On December 1, 2025, the Parties reached an agreement in principle on all material terms of a class action settlement.

R. On December 3, 2025, to efficiently effectuate the Settlement, the Parties filed a stipulation of dismissal in the *Ava Hoffman et al v. FitOn Inc.* matter (No. 2:24-cv-09105-FMO-PD) (ECF No. 48) and Plaintiffs subsequently refiled a consolidated class action complaint in the New York Supreme Court for Kings County. *Ava Hoffman et. al v. FitOn Inc.*, Index No. 542301/2025.

S. At all times, Defendant has denied and continues to deny any wrongdoing whatsoever and has denied and continues to deny that it committed, or attempted to commit, any wrongful act or violation of law or duty alleged in the Action. Defendant specifically denies that it is liable for damages, penalties, interest, attorneys' fees or costs, or any other remedies, and denies that any claim asserted by the Plaintiffs is suitable for class treatment other than for settlement purposes. This Agreement is a compromise, and the Agreement, any related documents, and any negotiations resulting in it shall not be construed as or deemed to be evidence of or an admission or concession of liability or wrongdoing on the part of Defendant, or any of the Released Parties, with respect to any claim of any fault or liability or wrongdoing or damage whatsoever.

T. Plaintiffs believe that the claims asserted in the Action against Defendant have merit and that they would have prevailed at summary judgment and/or trial. Nonetheless, Plaintiffs and Class Counsel recognize that Defendant has raised factual and legal defenses that present a risk that Plaintiffs may not prevail. Plaintiffs and Class Counsel also recognize the expense and delay associated with continued prosecution of the Action against Defendant through class certification, summary judgment, trial, and any subsequent appeals. Plaintiffs and Class Counsel have also taken into account the uncertain outcome and risks of litigation, especially in complex class actions, as well as the difficulties inherent in such litigation. Therefore, Plaintiffs believe it is desirable that the Released Claims be fully and finally compromised, settled, and resolved with prejudice. Based on their evaluation, Class Counsel have concluded that the terms and conditions of this Agreement are fair, reasonable, and adequate to the Settlement Class, and that it is in the best interests of the Settlement Class to settle the claims raised in the Action pursuant to the terms and provisions of this Agreement.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among Plaintiffs, the Settlement Class, and each of them, and Defendant, subject to final approval of the Court after a hearing or hearings as provided for in this Settlement Agreement, in consideration of the benefits flowing to the Parties from this Agreement, that the Action and the Released Claims shall be finally and fully compromised, settled, and released, and the Action shall be dismissed with prejudice, upon and subject to the terms and conditions of this Agreement.

AGREEMENT

1. DEFINITIONS

As used in this Settlement Agreement, the following terms have the meanings specified below:

1.1 **"Action"** means *Ava Hoffman et al v. FitOn Inc.*, Index No. 542301/2025, pending in the New York Supreme Court for Kings County.

1.2 **"Approved Claim"** means a Claim Form submitted by a Settlement Class Member that is (a) submitted timely and in accordance with the directions on the Claim Form and the provisions of the Settlement Agreement; (b) fully and truthfully completed by a Settlement Class Member with all of the information requested in the Claim Form; (c) signed by the Settlement Class Member, physically or electronically; and (d) approved by the Settlement Administrator pursuant to the provisions of this Agreement. An Approved Claim must attest that during the relevant time frame the Settlement Class Member (1) had a FitOn account or subscription (and the Settlement Class Member must provide the email address associated with that account); and (2) accessed or viewed a pre-recorded video on any of the FitOn Video Platform. If the total value of all Approved Claims exceeds the funds available for distribution to Settlement Class Members, then the amounts of the cash payments will be reduced pro rata.

1.3 **"Cash Payment"** means the payment of up to $10.00 USD made to Settlement Class Members who complete the claims process and submit an Approved Claim. Cash Payments shall be subject to the Net Settlement Benefit Cap.

1.4 **"Claim Form"** means the document substantially in the form attached hereto as **Exhibit A**, as approved by the Court. The Claim Form, to be completed by Settlement Class Members who wish to file a Claim for a payment, shall be available in electronic and paper format in the manner described below.

1.5 **"Claims Deadline"** means the date by which all Claim Forms must be postmarked or received to be considered timely and shall be set as a date no later than sixty (60) days after the Notice Date. The Claims Deadline shall be clearly set forth in the Preliminary Approval Order as well as in the Notice and the Claim Form.

1.6 **"Class Counsel"** means Bursor & Fisher, P.A.

1.7 **"Class Period"** means from October 22, 2022 until the date of Preliminary Approval.

1.8 **"Class Representatives"** means the named Plaintiffs in this Action, AvaHoffman, Shante Pierro, and Daniela Zamor.

1.9 **"Court"** means the New York Supreme Court for Kings County.

1.10 **"Defendant"** means FitOn Inc.

1.11 **"Defendant's Counsel"** means Christopher H. Wood and Michael Grimaldi of Lewis Brisbois Bisgaard & Smith LLP.

1.12 **"FitOn Video Platform"** means the website fitonapp.com, any subdomains, and any FitOn applications operated by Defendant.

1.13 "Effective Date" means the first date after the Court's order approving the settlement becomes final if no appeal is taken, or, if an appeal is taken, after all appeals have expired or been exhausted in such manner as to affirm the Court's order.

1.14 "Federal Action" means *Ava Hoffman et al v. FitOn Inc.,* Case No. 2:24-cv-09105-FMO-PD, which was pending in the United States District Court for the Central District of California and was voluntarily dismissed without prejudice on December 3, 2025.

1.15 "**Fee Award"** means the amount of attorneys' fees and costs awarded by the Court to Class Counsel, which will be paid out of the Settlement Benefit Cap.

1.16 **"Final"** means one business day following the occurrence of all of these events: (i) the settlement pursuant to this Settlement Agreement is approved by the Court; (ii) the Court has entered a Final Judgment; and (iii) the time to appeal or seek permission to appeal from the Final Judgment has expired or, if appealed, the appeal has been dismissed in its entirety, or the Final Judgment has been affirmed in its entirety by the court of last resort to which such appeal may be taken, and such dismissal or affirmance has become no longer subject to further appeal or review. Notwithstanding the above, any order modifying or reversing the Fee Award or incentive awards in this case shall not affect whether the Final Judgment is "Final" or any other aspect of the Final Judgment.

1.17 "Final Approval Hearing" means the hearing before the Court where the Parties will request the Final Judgment to be entered by the Court approving the Settlement Agreement, the Fee Award, and the incentive award to the Class Representatives.

1.18 "Final Judgment" means the Final Judgment and Order to be entered by the Court approving the Agreement after the Final Approval Hearing.

1.19 "Net Settlement Benefit Cap" means the Settlement Benefit Cap less (i) any Fee Award awarded by the Court; (ii) any incentive awards awarded by the Court; and (iii) any

Settlement Administration Expenses awarded by the Court. The Net Settlement Benefit Cap shall be used to pay any Approved Claims submitted by Settlement Class Members for Cash Payments.

1.20 "Notice" means the notice of the settlement memorialized by this Agreement, which is to be sent to the Settlement Class substantially in the manner set forth in this Agreement, is consistent with the requirements of Due Process, CPLR 908, and is substantially in the form of **Exhibit B** hereto.

1.21 "Notice Date" means the date by which the Notice is complete, which shall be no later than thirty (30) days after Preliminary Approval.

1.22 "Objection/Exclusion Deadline" means the date by which a written objection to this Settlement Agreement or a request for exclusion submitted by a Person within the Settlement Class must be made, which shall be designated as a date no later than forty-five (45) days after the Notice Date and no sooner than fourteen (14) days after papers supporting the Fee Award and Final Approval are filed with the Court and posted to the settlement website listed in Paragraph 4.1(d), or such other date as ordered by the Court in the Action.

1.23 "Person" shall mean, without limitation, any individual or legal entity and their spouses, heirs, predecessors, successors, representatives, or assigns. "Person" is not intended to include any governmental agencies or governmental actors, including, without limitation, any state Attorney General office.

1.24 "Plaintiffs" means AvaHoffman, Shante Pierro, and Daniela Zamor.

1.25 "Preliminary Approval" means the Court's certification of the Settlement Class for settlement purposes, preliminary approval of this Settlement Agreement, and approval of the form and manner of the Notice.

1.26 "Preliminary Approval Order" means the order preliminarily approving the Settlement Agreement, certifying the Settlement Class for settlement purposes, and directing notice thereof to the Settlement Class, which will be agreed upon by the Parties and submitted to the Court in conjunction with Plaintiffs' motion for preliminary approval of the Agreement.

1.27 "Released Claims" means any and all actual, potential, filed, known or unknown, fixed or contingent, claimed or unclaimed, suspected or unsuspected, claims, demands, liabilities, rights, causes of action, contract or agreements, extra contractual claims, damages, punitive, exemplary or multiplied damages, expenses, costs, attorneys' fees, and/or obligations (including "Unknown Claims"), whether in law or in equity, accrued or unaccrued, direct, individual or representative, of every nature and description whatsoever, whether based on the Action, the Federal Action, the Video Privacy Protection Act ("VPPA"), 18 U.S.C. § 2710, the California Invasion of Privacy Act, Cal. Pen. Code § 630 *et seq.*, tracking technologies, Defendant's use of third-party data processors such as Braze or Amplitude, Defendant's use of third-party applications, such as Meta's Facebook, cookies, disclosure of video information, and/or other state, federal, local, statutory, or common law or any other law, rule or regulation, against the Released Parties, or any of them, arising out of any facts, transactions, events, matters, occurrences, acts, disclosures, statements, representations, omissions or failures to act regarding the alleged disclosure, use, interception, invasion, tracking, surveillance, or transfer of information of or related to the Settlement Class Members relating to their use of the FitOn Video Platform

1.28 "Released Parties" means Defendant FitOn Inc., as well as any and all of its respective present or past heirs, executors, estates, administrators, predecessors, successors, assigns, parent companies, subsidiaries, divisions, licensors, licensees, associates, affiliates, employers, employees, agents, consultants, independent contractors, insurers, reinsurers, owners,

directors, managing directors, officers, partners, principals, members, attorneys, accountants, financial and other advisors, underwriters, shareholders, lenders, auditors, investment advisors, legal representatives, successors in interest, assigns and companies, firms, trusts, investors, and corporations.

1.29 "Releasing Parties" means Plaintiffs and Settlement Class Members and all of their respective present or past heirs, executors, estates, administrators, predecessors, successors, assigns, parent companies, subsidiaries, associates, affiliates, employers, employees, agents, consultants, independent contractors, insurers, reinsurers, directors, managing directors, officers, partners, principals, members, attorneys, accountants, financial and other advisors, underwriters, shareholders, lenders, auditors, investment advisors, legal representatives, successors in interest, assigns, companies, firms, trusts, and corporations.

1.30 "Settlement Administration Expenses" means the fees and expenses incurred by the Settlement Administrator in providing Notice, processing claims, responding to inquiries from the Settlement Class, sending payment for Approved Claims, and related services pertaining to the performance of the duties of the Settlement Administrator.

1.31 "Settlement Administrator" means Simpluris.

1.32 "Settlement Benefit Cap" shall mean the gross amount of two million five hundred thousand United States dollars ($2,500,000.00 USD) that shall represent Defendant's maximum financial obligation in this matter. In no event shall the total out-of-pocket costs paid by Defendant exceed the Settlement Benefit Cap. The following shall be subject to the Settlement Benefit Cap: (i) all Approved Claims for Cash Payments submitted by Settlement Class Members; (ii) the Settlement Administration Expenses; (iii) the Fee Award; and (iv) any incentive awards to the Class Representatives, as may be ordered by the Court.

1.33 **"Settlement Class"** means all persons in the United States who held accounts with a FitOn Video Platform and accessed at least one video between October 22, 2022 to the date the Settlement is preliminarily approved. Excluded from the Settlement Class are (i) Defendant, any entity in which the Defendant has a controlling interest, and Defendant's officers, directors, legal representatives, successors, parent companies, subsidiaries, affiliates, and assigns; (ii) any judge, justice, or judicial officer presiding over the Action and the members of their immediate families and judicial staff; and (iii) any individual who timely and validly opts out of the Settlement.

1.34 **"Settlement Class Member"** means a Person who falls within the definition of the Settlement Class and who has not submitted a valid request for exclusion.

1.35 **"Unknown Claims"** means claims that could have been raised in the Action and that any or all of the Releasing Parties do not know or suspect to exist, which, if known by him or her, might affect his or her agreement to release the Released Parties or the Released Claims or might affect his or her decision to agree, object to or not object to the Settlement.

2. SETTLEMENT RELIEF

2.1 Payments to Settlement Class Members.

(a) Settlement Class Members shall have until the Claims Deadline to submit an Approved Claim. Each Settlement Class Member with an Approved Claim shall be entitled to receive a cash payment of no more than $10.00 USD.

(b) All Cash Payments shall be subject to the Settlement Benefit Cap of $2,500,000.00. In the event that Approved Claims for Cash Payments exceed the Net Settlement Benefit Cap, all Cash Payments shall each be reduced *pro rata*.

(c) Each Settlement Class Member will receive his or her Cash Payment via check or any form of electronic payment agreed upon by the Parties. Checks for Cash Payments will be

sent via first class U.S. mail to the Settlement Class Members who submitted such Approved Claims.

(d) Within fourteen (14) days of the Final Judgment, the Settlement Administrator will identify for Defendant the total Cash Payments that are to be distributed to Settlement Class Members that submitted Approved Claims ("Cash Payment Fund"). Within ten (10) days of the Effective Date, Defendant shall wire the Cash Payment Fund to the Settlement Administrator for distribution to Settlement Class Members. Payments to all Settlement Class Members with Approved Claims shall be made within forty-five (45) days after the Effective Date by the Settlement Administrator.

(e) All cash payments issued to Settlement Class Members via check will state on the face of the check that it will expire and become null and void unless cashed within one hundred and eighty (180) days after the date of issuance. Those Settlement Class Members whose cash benefit checks are not cleared within one hundred eighty (180) days after issuance will be ineligible to receive a cash settlement benefit, and Defendant will have no further obligation to make any payment pursuant to this Settlement Agreement or otherwise to such Settlement Class Members. Unpaid funds from uncleared checks will revert to Defendant.

(f) A maximum of one claim, submitted on a single Claim Form, may be submitted by each Settlement Class Member. An Approved Claim must confirm that during the Class Period, the claimant (1) had a FitOn account or subscription; and (2) accessed or viewed a pre-recorded video on the FitOn Video Platform.

(g) Settlement Class Members that receive a Settlement Payment shall be solely responsible for the reporting and payment of their share of any federal, state, and/or local income or other taxes on payments received pursuant to this Settlement Agreement.

3. RELEASE

3.1 Upon the Effective Date, the Releasing Parties, and each of them, shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims against the Released Parties, and each of them. Further, upon the Effective Date, and to the fullest extent permitted by law, each Settlement Class Member, shall, either directly, indirectly, representatively, or in any capacity, be permanently barred and enjoined from filing, commencing, prosecuting, intervening in, or participating (as a class member or otherwise) in any lawsuit, action, or other proceeding in any jurisdiction (other than participation in the Settlement as provided herein) against any Released Party based on the Released Claims.

3.2 With respect to any and all Released Claims, and upon the Effective Date, Class Representatives expressly shall have, and each of the other Settlement Class Members shall be deemed to have, and by operation of the Final Judgment shall have, waived the provisions, rights, and benefits conferred by California Civil Code § 1542, and also any and all provisions, rights, and benefits conferred by any law of any state, province, or territory of the United States which is similar, comparable, or equivalent to California Civil Code § 1542, which provides:

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

Settlement Class Members, including Class Representatives, may hereafter discover facts in addition to, or different from, those that they, and any of them, now know or believe to be true with respect to the subject matter of the Released Claims, but Class Representatives expressly shall have, and each other Settlement Class Member shall be deemed to have, and by operation of the

Final Judgment shall have, upon the Effective Date, fully, finally and forever settled and released any and all Released Claims. The Class Representatives and Settlement Class Members shall be deemed by operation of the Final Judgment to have acknowledged that the foregoing waiver is a material element of the Settlement Agreement of which this release is a part.

4. NOTICE TO THE CLASS, INCLUDING OBJECTIONS AND EXCLUSIONS

4.1 The Notice Plan shall consist of the following:

(a) *Settlement Class List*. No later than fourteen (14) days after Preliminary Approval, Defendant shall produce an electronic list from its records that includes the names and email addresses, to the extent readily available, belonging to individuals with FitOn accounts or subscriptions registered in the United States during the Class Period. Class Counsel's assent to this Agreement shall constitute consent on behalf of the Settlement Class to disclose this information, consistent with the written consent provisions of the VPPA. This electronic document shall be called the "Class List," and shall be provided to the Settlement Administrator. The Settlement Administrator shall not use the Settlement Class List, or any information contained within it, for any other purposes other than administering the Settlement, and shall take reasonable measures to protect the information from any third-party disclosure. Class Counsel shall indemnify and hold harmless Defendant for any individual in the Settlement Class that contends, asserts, or alleges Defendant has produced the Class List in a manner inconsistent with the written consent provisions of the VPPA.

(b) *Direct Notice.* In the event that the Court preliminarily approves the Settlement, no later than the Notice Date, the Settlement Administrator shall send Notice via email that is substantially in the form attached as **Exhibit B**, along with an electronic link to the Claim Form, to all Settlement Class Members for whom a valid email address is available in the Class List. In the event transmission of email notice results in any "bounce-backs," the

Settlement Administrator shall, where reasonable, correct any issues that may have caused the "bounce-back" to occur and make a second attempt to re-send the email notice.

(c) *Settlement Website.* The Claims Administrator shall establish a dedicated settlement website (www.fitonvppasettlement.com) and shall maintain and update the website through the Effective Date. The website shall include "noindex, nofollow" directives or equivalent technical measures to prevent indexing and crawling by search engines and automated discovery tools. Within thirty (30) days from entry of the Preliminary Approval Order, Notice shall be provided on the website, which shall include the ability to file Claim Forms on-line. The Notice provided on the Settlement Website shall be substantially in the form of **Exhibit C** hereto.

(d) *Contact from Class Counsel.* Class Counsel, in their capacity as counsel to Settlement Class Members, may from time-to-time contact a Settlement Class Member to answer any questions the Settlement Class Member has presented to the Settlement Administrator about the Settlement Agreement, and assist the Settlement Class Member seeking assistance with filing Claim Forms.

4.2 The Notice shall advise the Settlement Class of their rights, including the right to be excluded from, comment upon, and/or object to the Settlement Agreement or any of its terms. Any objection to the Settlement Agreement, and any papers submitted in support of said objection, shall be considered by the Court at the Final Approval Hearing only if, on or before the Objection/Exclusion Deadline approved by the Court and specified in the Notice, the Person making the objection, directly or through counsel, submits the objection to the Settlement Administrator. Within three (3) days of receipt of an objection, the Settlement Administrator shall provide Class Counsel and Defendant's Counsel a copy of the objection. Class Counsel shall submit all objections to the Court in conjunction with the motion for final approval.

4.3 Any Settlement Class Member who intends to object to this Agreement must present the objection in writing, which must be personally signed by the objector, and must include the following: (1) the objector's name, email address, and mailing address; (2) an explanation of the basis upon which the objector claims to be a Settlement Class Member (e.g., copy of the Notice received by that Person); (3) all grounds for the objection, including all citations to legal authority and evidence supporting the objection; (4) the name and contact information of any and all attorneys representing, advising, or assisting the objector in connection with the objection (the "Objecting Attorneys"); and (5) a statement indicating whether the objector intends to appear at the Final Approval Hearing (either personally or through counsel who files an appearance with the Court in accordance with the Local Rules).

4.4 A Person in the Settlement Class may request to be excluded from the Settlement Class by sending to the Settlement Administrator a written request by email or mail postmarked on or before the Objection/Exclusion Deadline approved by the Court and specified in the Notice, providing his/her name and address, a signature, the name and number of the case, and an unambiguous statement that he or she wishes to be excluded from the Settlement Class for purposes of this settlement. A request to be excluded that does not include all of this information, or that is sent to an address other than that designated in the Notice, or that is not sent by email or postmarked within the time specified, shall be invalid, and the Person(s) serving such a request shall be a member(s) of the Settlement Class and shall be bound by all of the terms of this Agreement, if approved. Any member of the Settlement Class who validly elects to be excluded from this Agreement shall not (i) be bound by any orders or the Final Judgment; (ii) be entitled to relief under this Settlement Agreement; (iii) gain any rights by virtue of this Agreement; or (iv) be entitled to object to any aspect of this Agreement. The request for

exclusion must be personally signed by the Person requesting exclusion. So-called "mass" or "class" opt-outs shall not be allowed. To be valid, a request for exclusion must be postmarked or received by the Settlement Administrator by the date specified in the Notice. Within three (3) days of receipt of a request for exclusion, the Settlement Administrator shall provide Class Counsel and Defendant's Counsel a copy of the request. Class Counsel shall submit a list of the first and last name of all Persons who timely submitted a request for exclusion to the Court in conjunction with the motion for final approval.

4.5 Any Settlement Class Member who does not, using the procedures set forth in this Agreement and the Notice, either seek exclusion from the Settlement Class or timely file a valid Claim Form shall not be entitled to receive any payment or benefits pursuant to this Agreement, but will otherwise be bound by all of the terms of this Agreement, including the terms of the Final Judgment to be entered in the Action and the releases provided for in the Agreement, and will be barred from bringing any action against any of the Released Parties concerning the Released Claims.

4.6 For the convenience of the Parties and Settlement Class Members, below is a schedule of all proposed deadlines:

EVENT	PROPOSED DEADLINE
Deadline to Provide Settlement Administrator with Class List	14 Days After Preliminary Approval Order
Notice Date	30 Days After Preliminary Approval Order
Motion for Attorneys' Fees	45 Days After Notice Date
Claims Deadline	60 Days After Notice Date
Objection/Exclusion Deadline	60 Days After Notice Date
Motion for Final Approval	75 Days After Notice Date
Final Approval Hearing	90 to 120 Days After Notice Date
Cash Payments Sent to Settlement Class Members	45 Days After Effective Date

5. SETTLEMENT ADMINISTRATION

5.1 The Settlement Administrator shall, under the supervision of the Court, administer the relief provided by this Settlement Agreement by processing Claim Forms in a rational, responsive, cost effective, and timely manner. The Settlement Administrator shall maintain reasonably detailed records of its activities under this Agreement. The Settlement Administrator shall maintain all such records as are required by applicable law in accordance with its normal business practices and such records will be made available to Class Counsel and Defendant's Counsel upon request. The Settlement Administrator shall also provide reports and other information to the Court as the Court may require. The Settlement Administrator shall provide Class Counsel and Defendant's Counsel with information concerning Notice, administration, and implementation of the Settlement Agreement. Should the Court request, the Parties shall submit a timely report to the Court summarizing the work performed by the Settlement Administrator, including a report of all amounts from the Cash Payment Fund paid to Settlement Class Members on account of Approved Claims. Without limiting the foregoing, the Settlement Administrator shall do the following:

(a) Forward to Defendant's Counsel, with copies to Class Counsel, all original documents and other materials received in connection with the administration of the Settlement, and all copies thereof, within thirty (30) days after the date on which all Claim Forms have been finally approved or disallowed in accordance with the terms of this Agreement;

(b) Receive and distribute requests to be excluded from the Settlement Class and Settlement Class Member objections pursuant to the procedures described above. If the Settlement Administrator receives any exclusion forms, objections or other requests after the deadline for the submission of such forms and requests, the Settlement Administrator shall promptly provide copies thereof to Class Counsel and Defendant's Counsel;

(c) Provide weekly reports to Class Counsel and Defendant's Counsel, including without limitation, reports regarding the number of Claim Forms received, the number approved by the Settlement Administrator, and the categorization and description of Claim Forms rejected by the Settlement Administrator; and

(d) Make available for inspection by Class Counsel or Defendant's Counsel the Claim Forms received by the Settlement Administrator at any time upon reasonable notice.

5.2 The Settlement Administrator shall be obliged to employ reasonable procedures to screen claims for abuse or fraud and deny Claim Forms where there is evidence of abuse or fraud. The Settlement Administrator will reject any claim that does not comply in any material respect with the instructions on the Claim Form or the terms of Paragraph 1.2 above, or is submitted after the Claims Deadline. Each claimant who submits an invalid Claim Form to the Settlement Administrator must be given a notice of the Claim Form's deficiency and an opportunity to cure the deficiency within twenty-one (21) days of the date of the notice. The Settlement Administrator may contact any Person who has submitted a Claim Form to obtain additional information necessary to verify the Claim Form.

5.3 Defendant's Counsel and Class Counsel shall have the right to challenge the acceptance or rejection of a Claim Form submitted by Persons in or purporting to be in the Settlement Class and to obtain and review supporting documentation relating to such Claim Form. The Settlement Administrator shall follow any agreed decisions of Class Counsel and Defendant's Counsel as to the validity of any disputed submitted Claim Form. To the extent Class Counsel and Defendant's Counsel are not able to agree on the disposition of a challenge, the decision of the Settlement Administrator regarding the subject Claim Form shall stand.

5.4 In the exercise of its duties outlined in this Agreement, the Settlement Administrator shall have the right to reasonably request additional information from the Parties or any Settlement Class Member.

6. TERMINATION OF SETTLEMENT

6.1 Subject to Paragraphs 9.1–9.3 below, Defendant or the Class Representatives on behalf of the Settlement Class, shall have the right to terminate this Agreement by providing written notice of the election to do so ("Termination Notice") to all other Parties hereto within twenty-one (21) days of any of the following events: (i) the Court's refusal to grant Preliminary Approval of this Agreement in any material respect; (ii) the Court's refusal to grant Final Approval of this Agreement in any material respect; (iii) the Court's refusal to enter the Final Judgment in this Action in any material respect; (iv) the date when the Final Judgment is modified or reversed in any material respect by the Court of Appeals or the Supreme Court; or (v) the date when an Alternative Judgment, as defined in Paragraph 9.1(d) of this Agreement, is modified or reversed in any material respect by the Court of Appeals or the Supreme Court.

6.2 Subject to Paragraphs 9.1–9.3 below, Defendant shall have the further right, but not the obligation, in its sole discretion, to terminate this Agreement by providing written notice to Class Counsel within twenty-five (25) business days of the following event: individuals comprising more than five thousand (5,000) Persons in the Settlement Class in total have timely and validly opted out of the Agreement (i.e., excluded themselves) in accordance with the procedure set forth in Paragraph 4.4 above. If Defendant's Counsel and Class Counsel disagree as to whether a Person has validly opted out of the Agreement, the Settlement Administrator will resolve the disagreement.

6.3

6.4 The Parties agree that the Court's failure to approve, in whole or in part, the Fee Award payment to Class Counsel and/or the incentive award set forth in Paragraph 8 below shall not prevent the Agreement from becoming effective, nor shall it be grounds for termination of the Agreement. The procedures for any application for approval of attorneys' fees, costs, expenses, or incentive awards are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness and adequacy of the Settlement.

7. PRELIMINARY APPROVAL ORDER AND FINAL APPROVAL ORDER

7.1 Promptly after the execution of this Settlement Agreement, Class Counsel shall submit this Agreement together with its Exhibits to the Court and shall move the Court for Preliminary Approval of the Settlement set forth in this Agreement; certification of the Settlement Class for settlement purposes only; appointment of Class Counsel and the Class Representatives; and entry of a Preliminary Approval Order, which order shall set a Final Approval Hearing date and approve the Notice and Claim Form for dissemination substantially in the form of **Exhibits A, B, and C** hereto. The Preliminary Approval Order shall also authorize the Parties, without further approval from the Court, to agree to and adopt such amendments, modifications and expansions of the Settlement Agreement and its implementing documents (including all exhibits to this Agreement) so long as they are consistent in all material respects with the orders of this Court and terms of the Settlement Agreement, and do not limit or impair the rights of the Settlement Class.

7.2 Defendant's agreement as to certification of the Settlement Class is solely for purposes of effectuating the Settlement and for no other purpose. Defendant retains all of its objections, arguments, and defenses with respect to class certification and any other issue, and reserves all rights to contest class certification and any other issue if the Settlement set out in this Settlement Agreement does not result in entry of the Final Judgment, if the Court's approval is

reversed or vacated on appeal, if this Settlement is terminated as provided herein, or if the Settlement set forth in this Settlement Agreement otherwise fails to become effective. The Parties acknowledge that there has been no stipulation to any classes or certification of any classes for any purpose other than effectuating the Settlement, and that if the Settlement set forth in this Settlement Agreement is not finally approved, if the Court's approval is reversed or vacated on appeal, if this Settlement Agreement is terminated as provided herein, or if the Settlement set forth in this Settlement Agreement otherwise fails to become effective, this agreement as to certification of the Settlement Class becomes null and void *ab initio*, and this Settlement Agreement or any other settlement-related statement may not be cited regarding certification of the Class, or in support of an argument for certifying any class for any purpose related to this Action or any other proceeding.

7.3 At the time of the submission of this Agreement to the Court as described above, Class Counsel shall request that, after Notice is given, the Court hold a Final Approval Hearing and approve the Settlement of the Action as set forth herein.

7.4 After Notice is given, Class Representatives shall request and seek to obtain from the Court through a final approval motion a Final Judgment, which will (among other things):

(a) find that the Court has jurisdiction to approve the Agreement, including all exhibits thereto;

(b) approve the Settlement Agreement and the proposed Settlement as fair, reasonable, and adequate as to, and in the best interests of, the Settlement Class Members; direct the Parties and their counsel to implement and consummate the Agreement according to its terms and provisions; and declare the Agreement to be binding on, and have *res judicata* and preclusive effect in all pending and future lawsuits or other proceedings maintained by or on behalf of Plaintiffs and Releasing Parties;

(c) find that the Notice implemented pursuant to the Agreement (1) constitutes the best practicable notice under the circumstances; (2) constitutes notice that is reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency of the Action, their right to object to or exclude themselves from the proposed Agreement, and to appear at the Final Approval Hearing; (3) is reasonable and constitutes due, adequate, and sufficient notice to all persons entitled to receive notice; and (4) meets all applicable requirements of the CPLR, the Due Process Clause of the United States, the New York State Constitution, and the rules of the Court;

(d) find that the Class Representatives and Class Counsel adequately represent the Settlement Class for purposes of entering into and implementing the Agreement;

(e) dismiss the Action (including all individual claims and Settlement Class Claims presented thereby) on the merits and with prejudice, without fees or costs to any party except as provided in the Settlement Agreement;

(f) incorporate the Release set forth above, make the Release effective as of the date of the Effective Date, and forever discharge the Released Parties from the Release Claims, including Unknown Claims as set forth herein;

(g) permanently bar and enjoin all Settlement Class Members who have not been properly excluded from the respective Settlement Class from filing, commencing, prosecuting, intervening in, or participating (as class members or otherwise) in, any lawsuit or other action in any jurisdiction based on the Released Claims;

(h) without affecting the finality of the Final Judgment for purposes of appeal, retain jurisdiction as to all matters relating to administration, consummation, enforcement, and interpretation of the Settlement Agreement and the Final Judgment, and for any other necessary purpose; and

(i) incorporate any other provisions, as the Court deems necessary and just.

8. CLASS COUNSEL'S ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES; INCENTIVE AWARD

1.36 **8.1** Class Counsel will file its Fee Award motion no more than 45 days after the Notice Date With no consideration given or received, Class Counsel will limit its Fee Award petition to no more than one-third (33.33 percent) of the Settlement Benefit Cap (*i.e.*, $833,333.33). Provided that Class Counsel limits its request for a Fee Award to this amount, Defendant shall not oppose Class Counsel's request for the Fee Award. If the Court orders a Fee Award in an amount less than that requested by Class Counsel, such an award will not constitute a change in the Agreement permitting termination of the Agreement pursuant to its terms, nor will such a lesser award affect whether the Final Judgment is "Final" as that term is defined above. The Fee Award will be paid out of the Settlement Benefit Cap.

8.2 Plaintiffs and Class Counsel understand and agree that any Fee Award under this Agreement will be the full, final, and complete payment of all attorneys' fees and costs arising from or relating to the representation of Plaintiffs and Settlement Class in the Action. This is a material condition of this Agreement. Plaintiffs and Class Counsel therefore irrevocably and unconditionally release, acquit, and forever discharge any claim they may have against the Released Parties for attorneys' fees and costs arising from or relating to the individuals and matters identified in the Settlement Agreement.

8.3 The Fee Award shall be payable within forty-five (45) days after entry of the Court's Final Judgment, subject to Class Counsel executing the Undertaking Regarding Attorneys' Fees and Costs (the "Undertaking") attached hereto as **Exhibit D**, and providing all payment routing information and tax I.D. numbers for Class Counsel. Payment of the Fee Award shall be made by wire transfer to Bursor & Fisher, P.A., in accordance with wire instructions to be provided to the Settlement Administrator by Class Counsel and completion of

necessary forms, including but not limited to W-9 forms. Notwithstanding the foregoing, if for any reason the Final Judgment is reversed or rendered void as a result of an appeal(s) or the Settlement otherwise is terminated pursuant to its terms, then Class Counsel shall return such funds to Defendant. In addition, should any Parties to the Undertaking dissolve, merge, declare bankruptcy, become insolvent, or cease to exist prior to the final payment to Settlement Class Members, those Parties shall execute a new undertaking guaranteeing repayment of funds within fourteen (14) days of such an occurrence.

8.4 Class Counsel intends to file a motion for Court approval of incentive awards for the Class Representatives, to be paid out of the Settlement Benefit Cap, in addition to any funds the Class Representatives stand to otherwise receive from the Settlement. With no consideration having been given or received for this limitation, the Class Representatives will seek no more than $3,500 each as incentive awards. Such award shall be paid in the form of a check to the Class Representatives that is sent care of Class Counsel within thirty (30) days after the Effective Date. If the Court orders incentive awards in an amount less than that requested by Class Counsel, such awards will not constitute a change in the Agreement permitting termination of the Agreement pursuant to its terms, nor will such a lesser award affect whether the Final Judgment is "Final" as that term is defined above.

9. CONDITIONS OF SETTLEMENT, EFFECT OF DISAPPROVAL, CANCELLATION OR TERMINATION

9.1 The Effective Date of this Settlement Agreement shall not occur unless and until each of the following events occurs and shall be the date upon which the last (in time) of the following events occurs:

(a) The Parties have executed this Agreement;

(b) The Court has entered the Preliminary Approval Order;

(c) The Court has entered an order finally approving the Agreement, following Notice to the Settlement Class and a Final Approval Hearing, as provided in the CPLR, and has entered the Final Judgment, or a judgment consistent with this Agreement in all material respects; and

(d) The Final Judgment has become Final, as defined above, or, in the event that the Court enters an order and final judgment in a form other than that provided above ("Alternative Judgment") and that has the consent of the Parties, such Alternative Judgment becomes Final.

9.2 If some or all of the conditions specified in Paragraph 9.1 are not met, or in the event that this Agreement is not approved by the Court, or the Settlement set forth in this Agreement is terminated or fails to become effective in accordance with its terms, then this Settlement Agreement shall be canceled and terminated subject to Paragraph 6.1 unless Class Counsel and Defendant's Counsel mutually agree in writing to proceed with this Agreement. If any Party is in material breach of the terms hereof, and fails to cure such material breach within thirty (30) days of notice, any other Party, provided that it is in substantial compliance with the terms of this Agreement, may terminate this Agreement on notice to all of the Parties.

9.3 If this Agreement is terminated or fails to become effective for the reasons set forth in Paragraphs 6.1 and 9.1–9.2 above, the Parties shall be restored to their respective positions in the Action as of the date of the signing of this Agreement. In such event, any Final Judgment or other order entered by the Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*, and the Parties shall be returned to the *status quo ante* with respect to the Action as if this Agreement had never been entered into.

10. MISCELLANEOUS PROVISIONS

10.1 The Parties (a) acknowledge that it is their intent to consummate this Settlement Agreement; and (b) agree, subject to their fiduciary and other legal obligations, to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Agreement, to exercise their reasonable best efforts to accomplish the foregoing terms and conditions of this Agreement, to secure final approval, and to defend the Final Judgment through any and all appeals. Class Counsel and Defendant's Counsel agree to cooperate with one another in seeking Court approval of the Settlement Agreement, entry of the Preliminary Approval Order, and the Final Judgment, and promptly to agree upon and execute all such other documentation as may be reasonably required to obtain final approval of the Agreement.

10.2 The Parties intend this Settlement Agreement to be a final and complete resolution of all disputes between them with respect to the Released Claims by Plaintiffs, the Settlement Class, and each or any of them, on the one hand, against the Released Parties, and each or any of the Released Parties, on the other hand. Accordingly, the Parties agree not to assert in any forum that the Action was brought by Plaintiffs or defended by Defendant, or each or any of them, in bad faith or on a frivolous basis.

10.3 The Parties have relied upon the advice and representation of counsel, selected by them, concerning their respective legal liability for the claims hereby released. The Parties have read and understand fully the Agreement and have been fully advised as to the legal effect thereof by counsel of their own selection and intend to be legally bound by the Agreement.

10.4 Whether or not the Effective Date occurs or the Settlement Agreement is terminated, neither this Agreement nor the Settlement contained herein, nor any act performed or document executed pursuant to or in furtherance of this Agreement or the Settlement:

(a) is, may be deemed, or shall be used, offered or received against the Released Parties, or each or any of them, as an admission, concession or evidence of, the validity of any Released Claims, the truth of any fact alleged by the Plaintiffs, the deficiency of any defense that has been or could have been asserted in the Action, the violation of any law or statute, the reasonableness of the settlement amount or the Fee Award, or of any alleged wrongdoing, liability, negligence, or fault of the Released Parties, or any of them;

(b) is, may be deemed, or shall be used, offered or received against the Released Parties, as an admission, concession or evidence of any fault, misrepresentation or omission with respect to any statement or written document approved or made by the Released Parties, or any of them;

(c) is, may be deemed, or shall be used, offered or received against the Released Parties, or each or any of them, as an admission or concession with respect to any liability, negligence, fault or wrongdoing as against any Released Parties, in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. However, the Settlement, this Agreement, and any acts performed and/or documents executed in furtherance of or pursuant to this Agreement and/or Settlement may be used in any proceedings as may be necessary to effectuate the provisions of this Agreement. Further, if this Settlement Agreement is approved by the Court, any Party or any of the Released Parties may file this Agreement and/or the Final Judgment in any action that may be brought against such Party or Parties in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim;

(d) is, may be deemed, or shall be construed against Plaintiffs, the Settlement Class, the Releasing Parties, or each or any of them, or against the Released Parties, or each or

any of them, as an admission or concession that the consideration to be given hereunder represents an amount equal to, less than or greater than that amount that could have or would have been recovered after trial; and

(e) is, may be deemed, or shall be construed as or received in evidence as an admission or concession against Plaintiffs, the Settlement Class, the Releasing Parties, or each and any of them, or against the Released Parties, or each or any of them, that any of Plaintiffs' claims are with or without merit.

10.5 The headings used herein are used for the purpose of convenience only and are not meant to have legal effect.

10.6 The waiver by one Party of any breach of this Agreement by any other Party shall not be deemed as a waiver of any other prior or subsequent breaches of this Agreement.

10.7 All of the Exhibits to this Agreement are material and integral parts thereof and are fully incorporated herein by this reference.

10.8 This Agreement and its Exhibits constitute the entire agreement and understanding of the Parties with respect to the matters set forth herein, and supersede all prior negotiations, agreements, arrangements, and undertakings with respect to the matters set forth herein. No representations, warranties or inducements have been made to any Party concerning this Settlement Agreement or its Exhibits other than the representations, warranties and covenants contained and memorialized in such documents. This Agreement may be amended or modified only by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest.

10.9 Except as otherwise provided herein, each Party shall bear its own costs.

10.10 Plaintiffs represent and warrant that they have not assigned any claim or right or interest against the Released Parties to any other Person or Party and that they are fully entitled to release the same.

10.11 Each Person executing this Settlement Agreement, any of its Exhibits, or any related settlement documents on behalf of any Party hereto, hereby warrants and represents that such Person has the full authority to do so and has the authority to take appropriate action required or permitted to be taken pursuant to the Agreement to effectuate its terms. Class Counsel in particular warrants that all actions necessary for the execution of this Settlement Agreement have been taken.

10.12 This Agreement may be executed in one or more counterparts. Signature by digital means, facsimile, or in PDF format will constitute sufficient execution of this Agreement. All executed counterparts and each of them shall be deemed to be one and the same instrument. A complete set of original executed counterparts shall be filed with the Court if the Court so requests.

10.13 This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties hereto and the Released Parties.

10.14 The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of this Agreement, and all Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement embodied in this Agreement.

10.15 This Settlement Agreement shall be governed by and construed in accordance with the laws of the State of New York.

10.16 This Agreement is deemed to have been prepared by counsel for all Parties as a result of arm's-length negotiations among the Parties. Because all Parties have contributed

substantially and materially to the preparation of this Agreement, it shall not be construed more strictly against one Party than another.

10.17 Where this Agreement requires notice to the Parties, such notice shall be sent to the undersigned counsel: Yitzchak Kopel, Bursor & Fisher, P.A., 1330 Avenue of the Americas, 32nd Floor, New York, NY 10019 for Plaintiffs and Settlement Class; Christopher H. Wood of Lewis Brisbois Bisgaard & Smith LLP, 1700 Lincoln St., Ste. 3500, Denver, CO 80203 for Defendant.

IT IS SO AGREED TO BY THE PARTIES:

Dated: 02/02/2026

AVA HOFFMAN

By: Ava Hoffman
Ava Hoffman (Feb 2, 2026 13:30:57 EST)
Ava Hoffman, individually and as representative of the Class

Dated: 02/01/2026

SHANTE PIERRO

By: Shante Pierro (Feb 2, 2026 10:42:11 PST)
Shante Pierro, individually and as representative of the Class

Dated: 2/2/2026

DANIELA ZAMOR

Signed by:
By: 1A8DFD919225406...
Daniela Zamor, individually and as representative of the Class

Dated: 2/12/2026

FITON INC.

By:

Name: Russell Cook

Title: President

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: $2.5M FitOn Settlement Resolves Class Action Lawsuit Over Alleged Subscriber Data Sharing