

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

**KENNETH KOSKOSKY, VICTORIA  
WITHERBY, and SANDRA HOOVER**, on  
behalf of themselves and all others similarly  
situated,

Plaintiffs,

v.

**DAVITA INC.**

Defendant.

Case No. \_\_\_\_\_

**SETTLEMENT AND RELEASE AGREEMENT**

This Settlement and Release Agreement (“Agreement” or “Settlement Agreement”) is entered into by and between DaVita Inc. (“DaVita” or “Defendant”), and Kenneth Koskosky, Victoria Witherby, and Sandra Hoover (“Plaintiffs”), both individually and on behalf of the Settlement Class, in the case of *Kenneth Koskosky, Victoria Witherby, and Sandra Hoover v. DaVita Inc.*, Case No. \_\_\_\_\_, currently pending in the Seventeenth Judicial District in and for Broward County, Florida. Defendant and Plaintiffs are each referred to as a “Party” and are collectively referred to herein as “the Parties.”

**I. Recitals**

1. This Settlement arises out of Defendant’s alleged implementation and use of third-party analytics tools on websites, patient portals, and mobile applications owned, operated, or managed by Defendant or its subsidiaries or affiliates. Plaintiffs allege that Defendant’s use of these tools disclosed their web usage data, containing personally identifiable information and protected health information, to Facebook, Google, and other third-parties purportedly resulting in

the invasion of Plaintiffs' and Settlement Class Members' privacy (defined below as the "Website Usage Disclosure").

2. On June 16, 2023, Plaintiff Jane Doe I (Plaintiff Witherby) filed a complaint against Defendant in the Superior Court of San Diego County, California, asserting claims related to the Website Usage Disclosure on behalf of a putative class of Defendant's patients in California. Defendant timely removed to the case to the United States District Court for the Southern District of California (Case No. 23-cv-01424-AJB-BLM). Defendant filed a motion to dismiss on September 11, 2023. In response, Plaintiff Jane Doe I filed an amended complaint on November 7, 2023, which added Plaintiff Jane Doe II (Plaintiff Hoover) and certain additional factual allegations. Defendant again moved to dismiss, and the court granted the motion on April 24, 2024, while affording Plaintiffs leave to amend. Plaintiffs Jane Doe I and Jane Doe II filed a second amended complaint on May 9, 2024.

3. With the assistance of experienced mediator Hunter Hughes, counsel for the Parties engaged in extensive negotiations concerning a possible settlement of the claims asserted in the litigation, including a day-long, in-person mediation session on May 13, 2024, which resulted in a settlement in principle, the terms of which are reflected in this Settlement Agreement.

4. To facilitate a settlement on behalf of a nationwide class, Plaintiffs Jane Doe I (Witherby) and Jane Doe II (Hoover), along with a new Plaintiff, Kenneth Koskosky, filed a complaint ("Complaint") on July 2, 2024 in the Seventeenth Judicial District in and for Broward County, Florida, in the matter captioned *Kenneth Koskosky, Victoria Witherby, and Sandra Hoover v. DaVita Inc.*, Case No. \_\_\_\_\_ (the Broward County action, along with the action filed in the Southern District of California, are referred to collectively herein as the "Litigation").

5. On July 2, 2024, after filing the Complaint, Plaintiffs Jane Doe I and Jane Doe II

filed a notice dismissing their pending action against Defendant in the Southern District of California.

6. Defendant denies all claims asserted against it in the Litigation, denies all allegations of wrongdoing and liability, and denies all material allegations of the Complaint.

7. Plaintiffs and Class Counsel believe that the legal claims asserted in the Litigation have merit. Class Counsel have investigated the facts relating to the claims and defenses alleged in the Litigation and events underlying it, have made a thorough study of the legal principles applicable to the claims and defenses asserted in the Litigation, and have conducted a thorough assessment of the strengths and weaknesses of the Parties' respective positions.

8. The Parties desire to settle the Litigation and all claims arising out of or related to the Web Usage Disclosure, the allegations and/or subject matter of the Complaint, and the Litigation on the terms and conditions set forth herein for the purpose of avoiding the burden, expense, risk, and uncertainty of continuing to litigate.

9. Plaintiffs and Class Counsel, on behalf of the Settlement Class, have concluded, based upon their investigation, and taking into account the contested issues involved, the expense and time necessary to prosecute the Litigation through trial, the risks and costs associated with further prosecution of the Litigation, the uncertainties of complex litigation, the desired outcome from continued litigation, and the substantial benefits to be received pursuant to this Settlement Agreement, that a settlement with Defendant on the terms set forth herein is fair and reasonable and in the best interest of Plaintiffs and the Settlement Class. Plaintiffs and Class Counsel believe that the Settlement confers substantial benefits upon the Settlement Class.

10. The Parties agree and understand that neither this Settlement Agreement, nor the Settlement it represents, shall be construed as an admission by Defendant of any wrongdoing

whatsoever, including an admission of a violation of any statute or law or of liability on the claims or allegations in the Litigation or any other similar claims in other proceedings, or that any such claims would be suitable for class treatment.

11. The Parties, by and through their respective duly authorized counsel of record, and intending to be legally bound hereby, agree that the Litigation, and all matters and claims in the Complaint, and all matters and claims arising out of or related to the allegations and/or subject matter of the Complaint and Litigation, and all matters and claims that could have been asserted in the Litigation, shall be settled, compromised, and dismissed, on the merits and with prejudice, upon the following terms and conditions.

## **II. Definitions**

12. As used herein and in the related documents attached hereto as exhibits, the following terms have the meaning specified below:

a. “Attorneys’ Fees, Costs, and Expenses Award” means the amount of attorneys’ fees, expenses, and reimbursement of Litigation Costs awarded by the Court to be paid to Class Counsel from the Settlement Fund, such amount to be in full and complete satisfaction of Class Counsel’s claim or request (and any request made by any other attorneys) for payment of attorneys’ fees, expenses, and Litigation Costs incurred in respect of the Litigation.

b. “Cash Compensation” shall have the meaning given in Paragraph 25.

c. “Claim Check” shall have the meaning given in Paragraph 35.

d. “Claim Form” means the form members of the Settlement Class must complete and submit on or before the Claims Deadline to be eligible for the benefits described herein, and substantially in the form of **Exhibit A** to this Settlement Agreement. The Claim Form shall require a sworn affirmation under the laws of the United States but shall not require a notarization or any other form of verification.

- e. “Claim Payment” shall have the meaning given in Paragraph 35.
- f. “Claims Deadline” means the deadline for filing claims set at a date certain ninety (90) Days from the Notice Date, as defined in Paragraph 43.
- g. “Claims Period” means the period for filing claims up until a date certain ninety (90) Days from the Notice Date, as defined in Paragraph 43.
- h. “Claimants” shall have the meaning given in Paragraph 33.
- i. “Class Counsel” shall mean Milberg Coleman Bryson Phillips Grossman located at 201 Sevilla Avenue, Suite 200 Coral Gables, FL 33134.
- j. “Class List” shall have the meaning given in Paragraph 42.
- k. “Class Notice” means the notice of this Settlement to be provided to Settlement Class members, which shall include the Long-Form Notice and Postcard/Email Notice, substantially in the form attached hereto as **Exhibits B and C**, respectively.
- l. “Class Representatives” means Plaintiffs Kenneth Koskosky, Victoria Witherby, and Sandra Hoover.
- m. “Court” means the Seventeenth Judicial District in and for Broward County, Florida.
- n. “Day(s)” means calendar days, but does not include the day of the act, event, or default from which the designated period of time begins to run. Further, and notwithstanding the above, when computing any period of time prescribed or allowed by this Settlement Agreement, “Days” includes the last day of the period unless it is a Saturday, a Sunday, or a federal legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or federal legal holiday.
- o. “Defendant’s Counsel” means King & Spalding LLP, 1180 Peachtree Street

NE, Suite 1800, Atlanta, GA 30309.

p. “Effective Date” means the date defined in Paragraph 95 of this Settlement Agreement.

q. “Final” with respect to a judgment or order means that all of the following have occurred: (i) the time expires for noticing any appeal; and (ii) if there is an appeal or appeals, completion, in a manner that finally affirms and leaves in place the judgment or order without any material modification, of all proceedings arising out of the appeal or appeals (including, but not limited to, the expiration of all deadlines for motions for reconsideration, rehearing en banc, or petitions for review and/or certiorari, all proceedings ordered on remand, and all proceedings arising out of any subsequent appeal or appeals following decisions on remand).

r. “Final Approval Hearing” means the hearing to determine whether the Settlement should be given final approval and whether the applications of Class Counsel for an Attorneys’ Fees, Costs, and Expenses Award and for Service Awards should be approved.

s. “Final Approval Order” means the order of the Court finally approving this Settlement.

t. “Final Judgment” means the dismissal with prejudice of the lawsuit filed by Plaintiffs in the Seventeenth Judicial District in and for Broward County, Florida, entered in connection with the Settlement and Final Approval Order.

u. “Litigation” means the lawsuit captioned *Kenneth Koskosky, Victoria Witherby, and Sandra Hoover v. DaVita Inc.*, No. \_\_\_\_\_, currently pending in the Seventeenth Judicial District in and for Broward County, Florida, along with the lawsuit previously brought by Plaintiffs Jane Doe I and Jane Doe II in the United States District Court for the Southern District of California, Case No. 23-cv-01424-AJB-BLM.

v. “Litigation Costs” means costs and expenses incurred by Class Counsel in

connection with commencing, prosecuting, mediating, settling the Litigation, and obtaining a Final Approval Order and Final Judgment.

w. “Long-Form Notice” means the written notice substantially in the form of **Exhibit B** to this Settlement Agreement.

x. “Net Settlement Fund” means the amount of funds that remain in the Settlement Fund after funds are paid from or allocated for payment from the Settlement Fund for the following: (i) reasonable Notice and Claims Administration Costs incurred pursuant to this Settlement Agreement, (ii) any taxes owed by the Settlement Fund, (iii) any Service Awards approved by the Court, and (iv) any Attorneys’ Fees, Costs, and Expenses Award approved by the Court.

y. “Notice and Claims Administration Costs” means all approved reasonable costs incurred or charged by the Settlement Administrator in connection with providing notice to members of the Settlement Class and administering the Settlement. This does not include any separate costs incurred directly by Defendant or any of Defendant’s attorneys, agents or representatives in the Litigation.

z. “Notice Date” means the date defined in Paragraph 43 of this Settlement Agreement.

aa. “Notice Program” means the notice program described in Section VII.

bb. “Objection(s)” shall have the meaning set forth in Paragraphs 52 and 53.

cc. “Objection Deadline” shall have the meaning set forth in Paragraph 54 or as otherwise ordered by the Court.

dd. “Opt-Out Date” shall have the meaning set forth in Paragraph 59.

ee. “Parties” means Plaintiffs collectively and Defendant, and a “Party” means either Plaintiffs or the Defendant.

ff. “Plaintiffs’ Released Claims” means all claims and other matters released in and by Section XV of this Settlement Agreement.

gg. “Postcard Notice” and “Email Notice” means the written notice to be sent to Settlement Class Members pursuant to the Preliminary Approval Order substantially in the form as attached as **Exhibit C** to this Settlement Agreement.

hh. “Preliminary Approval Date” means the date the Preliminary Approval Order has been executed and entered by the Court.

ii. “Preliminary Approval Order” means the order certifying the proposed Settlement Class for settlement purposes, preliminarily approving this Settlement Agreement, approving the Notice Program, and setting a date for the Final Approval Hearing, entered in a format the same as or substantially similar to that of the Proposed Preliminary Approval Order attached hereto as **Exhibit D**.

jj. “Related Entities” means Defendant’s past or present parents, subsidiaries, divisions, and related or affiliated entities of any nature whatsoever, whether direct or indirect, including those entities with whom Defendant has a management services agreement and those entities that Defendant controls, as well as each of Defendant’s and these entities’ respective predecessors, successors, assigns, shareholders, members, trustees, directors, officers, employees, principals, agents, attorneys, representatives, providers, advisors, consultants, contractors, vendors, partners, insurers, reinsurers, and subrogees, and includes, without limitation, any person or entity related to any such entity who is, was, or could have been named as a defendant in this Litigation.

kk. “Released Claims” means all Plaintiffs’ Released Claims and Released Class Claims.



ll. “Releases” shall have the meaning set forth in Paragraphs 86 through 89.

mm. “Released Class Claims” means all class claims and other matters released in and by Section XV of this Settlement Agreement.

nn. “Releasing Parties” shall be defined as Plaintiffs, those Settlement Class Members who do not validly and timely opt out of the Settlement Class, and all of their respective present or past spouses, heirs, executors, representatives, estates, administrators, predecessors, successors, assigns, associates, affiliates, employers, employees, agents, consultants, independent contractors, insurers, partners, attorneys, accountants, financial and other advisors, underwriters, lenders, auditors, investment advisors, legal representatives, companies, firms, trusts, and corporations and/or anyone claiming through them or acting or purporting to act for them or on their behalf.

oo. “Released Parties” means Defendant and the Related Entities, as well as their respective present or past joint ventures, parent companies, subsidiaries, licensors, licensees, associates, affiliates, employers, administrators, employees, agents, consultants, insurers, reinsurers, directors, managing directors, officers, principals, members, attorneys, accountants, financial and other advisors, underwriters, shareholders, lenders, auditors, investment advisors, legal representatives, successors in interest, assigns, and companies, firms, trusts, and corporations, whether foreign or domestic, that are owned or controlled by Defendant.

pp. “Request for Exclusion” shall have the meaning set forth in Paragraph 59.

qq. “Service Award” shall have the meaning set forth in Paragraph 64.

rr. “Settlement” means the settlement reflected by this Settlement Agreement.

ss. “Settlement Administrator” means the class action settlement administrator retained Class Counsel to carry out the Notice Program and administer the claims and Settlement

Fund distribution process, along with any other responsibilities as set forth in this Settlement Agreement, as agreed to by the Parties, or as ordered by the Court. After reviewing bids, Class Counsel, subject to Court approval, have agreed to use Kroll Settlement Administration, LLC (“Kroll”) as the Settlement Administrator in this matter.

tt. “Settlement Agreement” means this Settlement Release and Agreement, including all exhibits hereto.

uu. “Settlement Class” means all U.S. persons who are, or have been, patients of Defendant who were treated at Defendant’s U.S. clinics and who visited any websites, patient portals, and/or mobile applications owned, operated, or managed directly or indirectly by Defendant or its subsidiaries or affiliates at least once between November 20, 2017 and up to and including September 21, 2023. Excluded from the Class are: (i) Defendant, any entity in which Defendant has a controlling interest, and Defendant’s affiliates, parents, subsidiaries, officers, directors, legal representatives, successors, and assigns; (ii) any judge, justice, or judicial officer presiding over the Litigation and the members of their immediate families and judicial staff; and (iii) any individual who timely and validly excludes themselves from the Settlement.

vv. “Settlement Class Member(s)” means all persons who are members of the Settlement Class. The Settlement Class consists of approximately 605,436 persons.

ww. “Settlement Class Release” shall have the meaning set forth in Paragraph 87.

xx. “Settlement Fund” means the non-reversionary sum of three million eight hundred thousand dollars and zero cents (\$3,800,000.00), to be paid by, or on behalf of, Defendant as specified in this Settlement Agreement, including any interest accrued thereon after payment, which shall be used as the only source of payment for all costs of the Settlement.

yy. “Settlement Website” means a dedicated website created and maintained by the Settlement Administrator, which will contain relevant documents and information about the Settlement, including this Settlement Agreement, the Postcard Notice, the Long-Form Notice, and the Claim Form, among other things as agreed upon by the Parties and approved by the Court as required.

zz. “Website Usage Disclosure” means the alleged disclosure of personal information of Plaintiffs and Settlement Class Members to Facebook, Google, or other third-parties via web tracking or analytics tools allegedly used on websites, patient portals, and mobile applications owned, operated, or managed directly or indirectly by Defendant or its subsidiaries or affiliates from November 20, 2017 through September 21, 2023.

### **III. CERTIFICATION OF THE SETTLEMENT CLASS**

13. For settlement purposes only, Plaintiffs will request that the Court certify the Settlement Class.

14. If this Settlement Agreement is terminated or disapproved, or if the Effective Date should not occur for any reason, then the Plaintiffs’ request for certification of the Settlement Class will be withdrawn and deemed to be of no force or effect for any purpose in this or any other proceeding. In that event, Defendant reserves the right to assert any and all objections and defenses to certification of a class, and neither the Settlement Agreement nor any order or other action relating to the Settlement Agreement shall be offered by any person in any litigation or other proceeding against Defendant or any Related Entities as evidence in support of a motion to certify any class.

### **IV. THE SETTLEMENT FUND**

15. **The Settlement Fund:** Defendant agrees to make a payment of three million eight hundred thousand dollars and zero cents (\$3,800,000.00) and deposit that payment into the

Settlement Fund within thirty (30) Days after the Court enters a Preliminary Approval Order. For the avoidance of doubt, and for purposes of this Settlement Agreement only, Defendant's liability under this Agreement shall not exceed three million eight hundred thousand dollars and zero cents (\$3,800,000.00), inclusive of any Service Awards; any Attorneys' Fees, Costs, and Expenses Award; any Notice and Claims Administration Costs; any payments made or other benefits provided to Settlement Class Members; and any taxes applicable to the Settlement Fund. The timing set forth in this provision is contingent upon the receipt of a Form W-9 and payment instructions from the Settlement Administrator for the Settlement Fund by the date that the Preliminary Approval Order is issued. If Defendant does not receive this information by the date that the Preliminary Approval Order is issued, the payments specified by this paragraph shall be made within thirty (30) days after Defendant receives this information.

16. **Custody of the Settlement Fund:** The Settlement Fund shall be deposited in an appropriate qualified settlement fund established by the Settlement Administrator but shall remain subject to the jurisdiction of the Court until such time as the entirety of the Settlement Fund is distributed pursuant to this Settlement Agreement or returned to those who paid the Settlement Fund in the event this Settlement Agreement is voided, terminated, or cancelled.

17. **Effect of Termination:** In the event this Settlement Agreement is voided, terminated, or cancelled due to lack of approval from the Court or any other reason: (i) the Class Representatives and Class Counsel shall have no obligation to repay any of the Notice and Claims Administration Costs that have been paid or incurred in accordance with the terms and conditions of this Settlement Agreement; (ii) any amounts remaining in the Settlement Fund after payment of Notice and Claims Administration Costs paid or incurred in accordance with the terms and conditions of this Settlement Agreement, including all interest earned on the Settlement Fund net

of any taxes, shall be returned to Defendant; and (iii) no other person or entity shall have any further claim whatsoever to such amounts.

18. **Non-Reversionary:** This Settlement is non-reversionary. As of the Effective Date, all rights of Defendant in or to the Settlement Fund shall be extinguished, except in the event this Settlement Agreement is voided, cancelled, or terminated, as described in Section XIV of this Settlement Agreement. In the event the Effective Date occurs, no portion of the Settlement Fund shall be returned to Defendant.

19. **Use of the Settlement Fund:** As further described in this Settlement Agreement, the Settlement Fund shall be used by the Settlement Administrator to pay for: (i) reasonable Notice and Claims Administration Costs incurred pursuant to this Settlement Agreement as approved by Class Counsel and the Court, (ii) any taxes owed by the Settlement Fund, (iii) any Service Awards approved by the Court, (iv) any Attorneys' Fees, Costs, and Expenses Award approved by the Court, and (v) any payments made or other benefits provided to Settlement Class Members, pursuant to the terms and conditions of this Settlement Agreement. The Settlement Administrator will maintain control over the Settlement Fund and shall be responsible for all disbursements, including payment of any applicable taxes.

20. **Payment/Withdrawal Authorization:** No amounts may be withdrawn from the Settlement Fund unless (i) expressly authorized by the Settlement Agreement, or (ii) as may be approved by the Court. Class Counsel may authorize the periodic payment of actual reasonable Notice and Claims Administration Costs from the Settlement Fund as such expenses are invoiced without further order of the Court. The Settlement Administrator shall provide Class Counsel and Defendant with notice of any withdrawal or other payment the Settlement Administrator proposes to make from the Settlement Fund before the Effective Date at least seven (7) business days prior

to making such withdrawal or payment.

21. **Payments to Class Members:** The Settlement Administrator, subject to such supervision and direction of the Court and Class Counsel as may be necessary or as circumstances may require, shall administer and oversee distribution of the Settlement Fund to Claimants pursuant to this Settlement Agreement.

22. **Treasury Regulations and Fund Investment:** The Parties agree that the Settlement Fund is intended to be maintained as a qualified settlement fund within the meaning of Treasury Regulation § 1.468 B-1, and that the Settlement Administrator, within the meaning of Treasury Regulation § 1.468 B-2(k)(3), shall be responsible for filing tax returns and any other tax reporting for or in respect of the Settlement Fund and paying from the Settlement Fund any taxes owed by the Settlement Fund. The Parties agree that the Settlement Fund shall be treated as a qualified settlement fund from the earliest date possible and agree to any relation-back election required to treat the Settlement Fund as a qualified settlement fund from the earliest date possible. Any and all funds held in the Settlement Fund shall be held in an interest-bearing account insured by the Federal Deposit Insurance Corporation at a financial institution determined by the Settlement Administrator and approved by the Parties. Funds may be placed in a non-interest-bearing account as may be reasonably necessary during the check-clearing process. The Settlement Administrator shall provide an accounting of any and all funds in the Settlement Fund, including any interest accrued thereon and payments made pursuant to this Settlement Agreement, upon request of any of the Parties.

23. **Taxes:** All taxes owed by the Settlement Fund shall be paid out of the Settlement Fund, shall be considered part of the Notice and Claims Administration Costs, and shall be timely paid by the Settlement Administrator without prior order of the Court. Further, the Settlement

Fund shall indemnify and hold harmless the Parties and their counsel for any taxes related to the Settlement (including, without limitation, taxes payable by reason of any such indemnification payments). The Parties and their respective counsel have made no representation or warranty with respect to the tax treatment by any Class Representative or any Settlement Class Member of any payment or transfer made pursuant to this Settlement Agreement or derived from or made pursuant to the Settlement Fund. Each Class Representative and Settlement Class Member shall be solely responsible for the federal, state, and local tax consequences to him or her of the receipt of funds from the Settlement Fund pursuant to this Settlement Agreement. Under no circumstances will Defendant have any liability for taxes or tax expenses under the Settlement Agreement.

**24. Limitation of Liability**

a. Defendant and Defendant's Counsel shall not have any responsibility for or liability whatsoever with respect to (i) any act, omission, or determination of Class Counsel, the Settlement Administrator, or any of their respective designees or agents, in connection with the administration of the Settlement or otherwise; (ii) the management, investment or distribution of the Settlement Fund; (iii) the formulation, design, or terms of the disbursement of the Settlement Fund; (iv) the determination, administration, calculation, or payment of any claims asserted against the Settlement Fund; (v) any losses suffered by, or fluctuations in the value of the Settlement Fund; or (vi) the payment or withholding of any taxes, expenses, and/or costs incurred in connection with the taxation of the Settlement Fund or the filing of any returns. Defendant also shall have no obligation to communicate with Settlement Class Members and others regarding amounts paid under the Settlement.

b. The Class Representatives and Class Counsel shall not have any liability whatsoever with respect to (i) any act, omission, or determination of the Settlement Administrator,

or any of its respective designees or agents, in connection with the administration of the Settlement or otherwise; (ii) the management, investment, or distribution of the Settlement Fund; (iii) the formulation, design, or terms of the disbursement of the Settlement Fund; (iv) the determination, administration, calculation, or payment of any claims asserted against the Settlement Fund; (v) any losses suffered by or fluctuations in the value of the Settlement Fund; or (vi) the payment or withholding of any taxes, expenses, and/or costs incurred in connection with the taxation of the Settlement Fund or the filing of any returns.

## **V. BENEFITS TO SETTLEMENT CLASS MEMBERS**

25. Settlement Class Members must submit a valid Claim Form in order to receive any benefits under the Settlement. Claims will be subject to review for completeness and eligibility by the Settlement Administrator. For claims deemed invalid, the Settlement Administrator will provide claimants an opportunity to cure in the manner set forth in paragraph 33 below. All Settlement Class members who submit a valid Claim Form may elect to receive access to one year of Privacy Shield—a data protection and monitoring service—and/or a share of the Net Settlement Fund (“Cash Compensation”) that is allocated by proration as described in Paragraph 35.

## **VI. SETTLEMENT ADMINISTRATION**

26. All agreed-upon and reasonable Notice and Claims Administration Costs will be paid from the Settlement Fund.

27. Class Counsel represent that (i) they solicited competitive bids for Settlement administration, including Notice and Claims Administration Costs; (ii) they believe that Email Notice, where available, and Postcard Notice, is appropriate under the circumstances; and (iii) they will direct the Settlement Administrator to utilize other appropriate forms of notice if practicable, in order to contain the Notice and Claims Administration Costs while still providing effective notice to the Settlement Class Members.



28. The Settlement Administrator will provide written notice of the Settlement terms to all Settlement Class Members for whom Defendant has provided a valid mailing address or email address. The Settlement Administrator shall perform skip-tracing for any returned mail and shall re-mail notice to any Settlement Class Members whose addresses are uncovered by skip-tracing.

29. The Settlement Administrator will cause the Notice Program to be effectuated in accordance with the terms of the Settlement Agreement and any orders of the Court.

30. The Settlement Administrator will administer the settlement process in accordance with the terms of the Settlement Agreement and as directed by Class Counsel, subject to the Court's supervision and direction as circumstances may require.

31. To make a claim, a Settlement Class Member must complete and submit a valid, timely, and sworn Claim Form. A Claim Form shall be submitted online at the Settlement Website or by U.S. mail and must be submitted on the Settlement Website or postmarked no later than the Claims Deadline.

32. The Settlement Administrator will review and evaluate each Claim Form for validity, timeliness, and completeness.

33. If, in the determination of the Settlement Administrator, a Settlement Class Member submits a timely but incomplete Claim Form, the Settlement Administrator shall give the Settlement Class Member notice of the deficiencies, and the Settlement Class Member shall have twenty-one (21) Days from the date of the written notice to cure the deficiencies. The Settlement Administrator will provide notice of deficiencies concurrently to Defendant's Counsel and Class Counsel. If the defect is not cured within the 21-Day period, then the Claim will be deemed invalid and denied by the Settlement Administrator. All Settlement Class Members who submit a valid

and timely Claim Form, including a Claim Form deemed defective but timely cured, shall be considered “Claimants.”

34. The Settlement Administrator will maintain records of all Claim Forms submitted until three hundred and sixty (360) Days after entry of a Final Judgment. Claim Forms may be provided to the Court upon request and to Defendant, Class Counsel and Defendant’s Counsel to the extent necessary to resolve claims determination issues pursuant to this Settlement Agreement. Class Counsel or the Settlement Administrator will provide other reports or information that the Court may require or that the Parties may reasonably request.

35. Subject to the terms and conditions of this Settlement Agreement, forty-five (45) Days after the Effective Date, the Settlement Administrator shall mail or otherwise provide a payment via check (“Claim Check”) or electronic means (a “Claim Payment”) to each Claimant for their *pro rata* share of the Net Settlement Fund, in accordance with the following distribution procedures:

a. The Settlement Administrator shall utilize the Net Settlement Fund to purchase one year of Privacy Shield services for all Settlement Class Members who claim that benefit as described in Paragraph 25 and to make all Cash Compensation payments as described in Paragraph 35.

b. The amount of each Claim Payment shall be calculated by dividing the Net Settlement Fund (less the cost of one year of Privacy Shield services for Settlement Class Members who claim that benefit) by the number of valid claims for Cash Compensation.

36. Each Claim Check shall be mailed to the address provided by the Claimant on his or her Claim Form. All Claim Checks issued under this section shall be void if not negotiated within ninety (90) Days of their date of issue and shall contain a legend to that effect. Claim Checks

issued pursuant to this section that are not negotiated within ninety (90) Days of their date of issue shall not be reissued. The Settlement Administrator may also provide for payment of Claim Payments via electronic means.

37. To the extent any monies remain in the Net Settlement Fund more than one hundred twenty (120) Days after the distribution of all Claim Payments to the Claimants, a subsequent payment will be evenly made to all Claimants who cashed or deposited their initial Claim Payments they received, provided that the average payment amount is equal to or greater than three dollars and zero cents (\$3.00). The distribution of this remaining Net Settlement Fund shall continue until the average payment amount in a distribution is less than three dollars and zero cents (\$3.00), whereupon the amount remaining in the Net Settlement Fund, if any, shall be distributed by mutual agreement of the Parties with approval by the Court.

38. For any Claim Check or Claim Payment returned to the Settlement Administrator as undeliverable (including, but not limited to, when the intended recipient is no longer located at the address), the Settlement Administrator shall make reasonable efforts to find a valid address and resend the Claim Payment within thirty (30) Days after the check or electronic payment is returned to the Settlement Administrator as undeliverable. The Settlement Administrator shall only make one attempt to resend a Claim Check or Claim Payment.

39. No portion of the Net Settlement Fund shall revert or be repaid to Defendant after the Effective Date.

## **VII. NOTICE TO SETTLEMENT CLASS MEMBERS**

40. The Parties agree the following Notice Program provides reasonable notice to the Settlement Class.

41. Direct notice shall be provided to Settlement Class Members via Email Notice, for Settlement Class Members for whom the Settlement Administrator is provided a valid email

address by Defendant, and otherwise by U.S. Mail, for Settlement Class Members for whom the Settlement Administrator has a valid address.

42. Within thirty (30) Days of the entry of the Preliminary Approval Order, Defendant shall provide the Settlement Administrator with the names, email addresses (if available), and last addresses known to Defendant for the patients who may be Settlement Class Members (the “Class List”). The Settlement Administrator shall, by using the National Change of Address database maintained by the U.S. Postal Service (the “Postal Service”), obtain updates, if any, to the mailing addresses.

- a. Defendant shall provide the Class List to the Settlement Administrator only for the purposes of Settlement administration. The Settlement Administrator shall not provide the Class List to Class Counsel.
- b. To the extent Class Counsel learns the identity, address, or email address of any Settlement Class Member(s) in connection with the Settlement administration process through any means, including, but not limited to, if Class Counsel is contacted by any Settlement Class Member(s) after such Settlement Class Member(s) receive Class Counsel’s contact information on the Class Notice or Claim Form, Class Counsel shall not use that information for any purpose other than assisting Settlement Class Member(s) with the Settlement process. Class Counsel shall not use information obtained through the Settlement administration process regarding the identity of and/or last-known address or email address of any Class Member(s) to solicit or notify any such Settlement Class Member(s) about any other currently-pending or future actions that such Settlement Class Member(s) may be able to join and/or bring. Nothing in this Settlement Agreement shall restrict Class Counsel’s ability and right to represent any Class Member(s) in this Litigation or in any other currently-pending or future action in the event that such Settlement Class Member(s) independently approach(es) Class Counsel seeking representation in connection with their potential rights to assert claims against any entity or is approached by Class Counsel without using information obtained in connection with the Settlement administration process in this Litigation.

43. Within sixty (60) Days following entry of a Preliminary Approval Order (“Notice Date”), the Settlement Administrator shall provide Email Notice or Postcard Notice to all Settlement Class Members. The Settlement Administrator shall mail a Claim Form to Settlement Class Members upon written or telephonic request. An electronic version of the Claim Form shall

also be provided on the Settlement Website.

44. For any email addresses reported as invalid, the Settlement Administrator shall provide Postcard Notice. If any Postcard Notice is returned by the Postal Service as undeliverable, the Settlement Administrator shall re-mail the Postcard Notice to the forwarding address, if any, provided by the Postal Service on the face of the returned mail. For Postcard Notices returned with no forwarding address, the Settlement Administrator shall perform skip-tracing for any returned mail and shall re-mail notice to any Settlement Class Members whose addresses are uncovered by skip-tracing.

45. The mailed notice will consist of the Postcard Notice substantially in the form of **Exhibit C**. The Settlement Administrator shall have discretion to format this Postcard Notice in a reasonable manner to minimize mailing and administrative costs. Before the mailing of the Postcard Notice is commenced, Class Counsel and Defendant's Counsel shall first be provided with a proof copy (including what the items will look like in their final form) and shall have the right to inspect the same for compliance with the Settlement Agreement and the Court's orders.

46. No later than sixty (60) Days following entry of the Preliminary Approval Order, and prior to the mailing of the Postcard Notice and emailing of Email Notice to Settlement Class Members, the Settlement Administrator will create a dedicated Settlement Website. The Settlement Administrator shall cause the Complaint, Postcard/Email Notice, Long-Form Notice, Claim Form, this Settlement Agreement, the Preliminary Approval Order, and other relevant settlement and Court documents to be available on the Settlement Website. Any other content proposed to be included or displayed on the Settlement Website shall be approved in advance by Class Counsel and Defendant's Counsel, which approval shall not be unreasonably withheld. The website address and the fact that a more detailed Long-Form Notice and a Claim Form are available

on the Settlement Website shall be included in the Postcard/Email Notice. The Settlement Administrator shall also create and implement an Interactive Voice Response system, with a live operator option, and an email inbox, both of which Settlement Class Members may use to obtain information about the Settlement and Claims process.

47. Settlement Class Members shall be able to submit their Claim Forms via the Settlement Website.

48. The Settlement Website shall be maintained from the Notice Date until sixty (60) Days after the Effective Date.

49. Claim Forms shall be returned or submitted to the Settlement Administrator electronically on the Settlement Website or via U.S. mail, electronically submitted or postmarked (as the case may be) by the Claims Deadline set by the Court, or be forever barred unless otherwise ordered by the Court.

50. The Long-Form Notice and Postcard/Email Notice approved by the Court may be adjusted by the Settlement Administrator in consultation with and agreement by the Parties, as may be reasonable and necessary and not inconsistent with the Court's approval.

51. Prior to the Final Approval Hearing, the Settlement Administrator shall provide to Class Counsel to file with the Court an appropriate affidavit or declaration concerning compliance with the Court-approved Notice Program.

#### **VIII. OBJECTIONS TO THE SETTLEMENT**

52. Any Settlement Class Member who has not excluded himself or herself from the Settlement and who wishes to object to the Settlement Agreement must file with the Court a written objection to the Settlement ("Objection").

53. Each Objection must (i) include the case name and number of the lawsuit (*Kenneth Koskosky, Victoria Witherby, and Sandra Hoover v. DaVita Inc.*, Case No. \_\_\_\_\_),

(ii) set forth the Settlement Class Member's full name, current address, telephone number, and email address; (iii) contain the Settlement Class Member's personal and original signature; (iv) contain proof that the Settlement Class Member is a member of the Settlement Class, including an attestation under the laws of the United States that the objector is, or has been, a patient of Defendant and visited any websites, patient portals, and/or mobile applications owned, operated, or managed directly or indirectly by Defendant or its subsidiaries or affiliates at least once between November 20, 2017 and September 21, 2023; (v) state that the Settlement Class Member objects to the Settlement, in whole or in part; (vi) set forth a statement of the legal and factual basis for the Objection; (vii) provide copies of any documents that the Settlement Class Member wishes to submit in support of his/her position; (viii) identify any attorney representing the Settlement Class Member with respect to, or who provided assistance to the Settlement Class Member in drafting, his or her Objection, if any; (ix) contain the signature, name, address, telephone number, and email address of the Settlement Class Member's attorney, if any; (x) contain a list, including case name, court, and docket number, of all other cases in which the objector and/or the objector's counsel has filed an objection to any proposed class action settlement in the past three (3) years; (xi) state whether the objection applies only to the Settlement Class Member, to a specific subset of the Settlement Class, or to the entire Settlement Class, and (xii) state whether the objecting Settlement Class Member intends to appear at the Final Approval Hearing, and if so, whether personally or through an attorney.

54. Objections must be filed with the Court no later than sixty (60) Days after the Notice Date (the "Objection Deadline"). The Objection Deadline shall be included in the Postcard/Email Notice and Long-Form Notice.

55. Class Counsel and Defendant's Counsel may, but need not, respond to Objections,

if any, by means of a memorandum of law served prior to the Final Approval Hearing.

56. An objecting Settlement Class Member has the right, but is not required, to attend the Final Approval Hearing. If an objecting Settlement Class Member intends to appear at the Final Approval Hearing with counsel, he or she must also file a notice of appearance with the Court prior to the Final Approval Hearing.

a. If the objecting Settlement Class Member intends to appear at the Final Approval Hearing through counsel, his or her written Objection must also (i) identify the attorney(s) representing the objecting Settlement Class Member who will appear at the Final Approval Hearing and include the attorney(s) name, address, phone number, e-mail address, state bar(s) to which counsel is admitted, as well as associated state bar numbers; (ii) identify any witnesses whom the objecting Settlement Class Member intends to call to testify; and (iii) include a description of any documents or evidence that the objecting Settlement Class Member intends to offer.

57. Any Settlement Class Member who fails to timely file an Objection pursuant to the requirements set forth in this section, and otherwise as ordered by the Court, shall not be permitted to object to the approval of the Settlement at the Final Approval Hearing and shall be foreclosed from seeking any review of the Settlement or the terms of the Settlement Agreement by appeal or other means, and shall be bound by all the terms of the Settlement Agreement and by all proceedings, orders, and judgments in the Litigation.

58. The exclusive means for any challenge to the Settlement Agreement shall be through the provisions of Section VIII of this Settlement Agreement.

## **IX. OPT OUT PROCEDURES**

59. Each person wishing to opt-out of the Settlement Class shall individually sign and timely submit written notice of such intent (a “Request for Exclusion”) to the designated Post



Office box established by the Settlement Administrator. The written notice must (i) identify the case name and number of this lawsuit (*Kenneth Koskosky, Victoria Witherby, and Sandra Hoover v. DaVita Inc.*, Case No. \_\_\_\_\_); (ii) state the Settlement Class Member's full name, address, and telephone number; (iii) contain the Settlement Class Member's personal and original signature; (iv) state unequivocally the Settlement Class Member's intent to be excluded from the Settlement Class, and; (v) request exclusion only for that one Settlement Class Member whose personal and original signature appears on the request. To be effective, written notice must be postmarked no later than sixty (60) Days after the Notice Date (the "Opt-Out Date").

60. All Requests for Exclusion must be submitted individually in connection with a Settlement Class Member, i.e., one request is required for every Settlement Class Member seeking exclusion. Any Requests for Exclusion purporting to seek exclusion on behalf of more than one Settlement Class Member shall be deemed invalid by the Settlement Administrator.

61. All individuals who submit valid and timely Requests for Exclusion, as set forth in Paragraph 59 above, referred to herein as "Opt-Outs," shall not receive any benefits of and/or be bound by the terms of this Settlement Agreement, and shall not be entitled to object to or appeal any aspect of the Settlement. All individuals falling within the definition of the Settlement Class who do not validly and timely opt-out of the Settlement Class in the manner set forth in Paragraph 59 above shall be bound by the terms of this Settlement Agreement and the Final Judgment entered thereon, and all subsequent proceedings, orders, and judgments applicable to the Settlement Class.

62. Seven (7) Days after the Opt-Out Date, the Settlement Administrator shall provide the Parties with a complete and final list of all Opt-Outs who have timely and validly excluded themselves from the Settlement Class and, upon request, copies of all Requests for Exclusion that were submitted to the Settlement Administrator. Class Counsel may present to the Court the

number of Opt-Outs (if any), as well as a list of Opt-Outs that includes only first name, last initial, city, and state of each Opt-Out, no later than fourteen (14) Days before the Final Approval Hearing.

**X. ATTORNEYS' FEES, COSTS, AND EXPENSES, AND SERVICE AWARDS**

63. Class Counsel shall request the Court to approve an award of Attorneys' Fees, Costs, and Expenses Award not to exceed thirty-five percent (35%) of the amount of the Settlement Fund, which shall include the retail value of the Privacy Shield services, plus reasonable Litigation Costs. Any Attorneys' Fees, Costs, and Expenses Award approved by the Court shall be paid by the Settlement Administrator from the Settlement Fund no later than seven (7) Days after the Effective Date. For the avoidance of doubt, the Court-approved amount of any Attorneys' Fees, Costs, and Expenses Award shall be paid from the Settlement Fund, and other than paying for the Settlement Fund as provided for in this Settlement Agreement, Defendant shall have no obligation or liability with respect to payment of any attorneys' fees, costs, or expenses incurred by Class Counsel in the Litigation.

64. Class Counsel shall request the Court to approve a service award of two thousand five hundred dollars (\$2,500) for each of the named Class Representatives (Kenneth Koskosky, Victoria Witherby, and Sandra Hoover), which award is intended to recognize Plaintiffs for their efforts in the Litigation and commitment on behalf of the Settlement Class (the "Service Award"). For the avoidance of doubt, the Court-approved amount for any Service Award shall be paid from the Settlement Fund, and other than paying for the Settlement Fund as provided for in this Settlement Agreement, Defendant shall have no obligation or liability with respect to payment of any Service Awards (or any other compensation to the Class Representatives). If approved by the Court, this Service Award will be paid by the Settlement Administrator from the Settlement Fund no later than seven (7) Days after the Effective Date.

65. The Parties did not discuss or agree upon payment of the Service Awards or

Attorneys' Fees, Costs, and Expenses until after they agreed on all other materials terms of the Settlement.

66. Class Counsel will file applications with the Court for the requested Service Awards and Attorneys' Fees, Costs, and Expenses Award no later than fourteen (14) Days prior to the Objection Deadline.

67. The Parties agree that the Court's approval or denial of any request for the Service Awards or Attorneys' Fees, Costs, and Expenses Award are not conditions to this Settlement Agreement and are to be considered by the Court separately from final approval, reasonableness, and adequacy of the Settlement. If the Court declines to approve, in whole or in part, any request for Service Awards or for an Attorneys' Fees, Costs, and Expenses Award, all remaining provisions in this Settlement Agreement shall remain in full force and effect. No decision by the Court, or modification or reversal or appeal of any decision by the Court, concerning the payment of any Services Awards or any Attorneys' Fees, Costs, and Expenses Award, or the amounts thereof, shall operate to terminate or cancel (or be a basis for any Party to seek to terminate or cancel) this Settlement Agreement.

## **XI. NOTICES**

68. All notices to the Parties required by the Settlement Agreement shall be made in writing and communicated by mail or email to the following addresses:

All notices to Class Counsel or Class Representatives shall be sent to:

Gary M. Klinger  
Milberg Coleman Bryson Phillips Grossman  
227 W. Monroe Street, Suite 2100  
Chicago, Illinois 60606  
Tel: 866.252.0878  
GKlinger@milberg.com

All notices to Defendant's Counsel or Defendant shall be sent to:

Robert D. Griest  
King & Spalding LLP  
1180 Peachtree Street NE, Suite 1600  
Atlanta, Georgia 30309  
Tel: 404.572.4600  
rgriest@kslaw.com

69. Other than attorney-client communications or communications otherwise protected from disclosure pursuant to law or rule, the Parties shall promptly provide to each other copies of comments, Objections, or other documents or filings received from a Settlement Class Member as a result of the Notice Program.

## **XII. SETTLEMENT APPROVAL PROCESS**

70. After execution of this Settlement Agreement, Plaintiffs shall promptly move the Court to enter a Preliminary Approval Order in the form attached hereto as **Exhibit D**, or an order substantially similar to such form, which:

- a. Preliminarily approves this Settlement Agreement;
- b. Provisionally certifies the Settlement Class for settlement purposes only;
- c. Finds the proposed Settlement is sufficiently fair, reasonable, adequate, and in the best interests of the Settlement Class;
- d. Finds the Notice Program constitutes valid, due, and sufficient notice to the Settlement Class Members, and constitutes the best notice practicable under the circumstances, complying fully with the requirements of the laws of Florida, the Constitution of the United States, and any other applicable law and that no further notice to the Class is required beyond that provided through the Notice Program;
- e. Appoints the Settlement Administrator;
- f. Directs the Settlement Administrator to provide notice to Settlement Class Members in accordance with the Notice Program provided for in this Settlement Agreement;

- g. Approves the Claim Form and directs the Settlement Administrator to administer the claims process in accordance with the provisions of this Settlement Agreement;
- h. Approves the Opt-Out and Objection procedures as outlined in this Settlement Agreement;
- i. Schedules an appropriate Opt-Out Date, Objection Deadline and other Settlement-related dates and deadlines to be included in the Class Notice;
- j. Schedules a Final Approval Hearing to consider the final approval, reasonableness, and adequacy of the proposed Settlement and whether it should be finally approved by the Court; and,
- k. Contains any additional provisions agreeable to the Parties that might be necessary or advisable to implement the terms of this Settlement Agreement.

71. Defendant will not oppose entry of the Preliminary Approval Order so long as it is substantially in the form attached as **Exhibit D** and is otherwise consistent with this Agreement.

### **XIII. FINAL APPROVAL HEARING**

72. The Parties will recommend that the Final Approval Hearing shall be scheduled no earlier than one hundred (100) Days after the Notice Date.

73. The Parties may file a response to any Objections and a Motion for Final Approval no later than fourteen (14) Days prior to the Final Approval Hearing.

74. Any Settlement Class Member who wishes to appear at the Final Approval Hearing through counsel must, by the Objection Deadline, either mail or hand-deliver to the Court or file a notice of appearance in the lawsuit, and take all other actions or make any additional submissions as may be required by this Settlement Agreement, or as otherwise ordered by the Court.

75. Plaintiffs shall ask the Court to enter a Final Approval Order and Final Judgment which includes the following provisions:

a. A finding that the Notice Program fully and accurately informed all Settlement Class Members entitled to notice of the material elements of the Settlement, constitutes the best notice practicable under the circumstances, constitutes valid, due, and sufficient notice, and complies fully with the laws of Florida, the United States Constitution, and any other applicable law;

b. A finding that after proper notice to the Settlement Class, and after sufficient opportunity to object, no timely objections to this Settlement Agreement have been made, or a finding that all timely objections have been considered and denied;

c. Approval of the Settlement, as set forth in the Settlement Agreement, as fair, reasonable, adequate, and in the best interests of the Settlement Class, in all respects, finding that the Settlement is in good faith, and ordering the Parties and Settlement Administrator to perform the Settlement in accordance with the terms of this Settlement Agreement;

d. A finding that neither the Final Judgment, the Settlement, nor the Settlement Agreement shall constitute an admission of liability by any of the Parties, or any liability or wrongdoing whatsoever by any Party;

e. Subject to the reservation of jurisdiction for matters discussed in subparagraph (h) below, a dismissal with prejudice of the lawsuit;

f. A finding that Plaintiffs shall, as of the entry of the Final Judgment, conclusively be deemed to have fully, finally, and forever completely released, relinquished, and discharged the Released Parties from the Plaintiffs' Released Claims;

g. A finding that all Settlement Class Members who did not validly and timely opt out of the Settlement shall, as of the entry of the Final Judgment, conclusively be deemed to have fully, finally, and forever completely released, relinquished, and discharged the Released

Parties from the Released Class Claims; and

h. A reservation of exclusive and continuing jurisdiction over the lawsuit and the Parties for the purposes of, among other things, (i) supervising the implementation, enforcement, construction, and interpretation of the Settlement Agreement, the Final Approval Order, and the Final Judgment; and (ii) supervising the administration and distribution of the relief to the Settlement Class and resolving any disputes that may arise with regard to the foregoing. The Court's exclusive and continuing jurisdiction over the lawsuit and Parties shall include, without limitation, the Court's power to enforce the bar against Settlement Class Members' prosecution of Released Claims against Released Parties pursuant to any applicable law.

76. Upon entry of the Final Approval Order, the lawsuit shall be dismissed with prejudice, with the Parties to bear their own attorneys' fees, costs, and expenses not otherwise awarded in accordance with this Settlement Agreement.

#### **XIV. TERMINATION OF THIS SETTLEMENT AGREEMENT**

77. Each Party shall have the right to terminate this Settlement Agreement if:

a. The Court denies preliminary approval of this Settlement Agreement (or grants preliminary approval through an order that materially differs in substance to **Exhibit D** hereto), and the Parties are unable to modify the Settlement in a manner to obtain and maintain preliminary approval;

b. The Court denies final approval of this Settlement Agreement;

c. The Final Approval Order and Final Judgment do not become Final by reason of a higher court reversing final approval by the Court, and the Court thereafter declines to enter a further order or orders approving the Settlement on the terms set forth herein; or

d. The Effective Date cannot or does not occur for any reason, including but not limited to the entry of an order by any court that would require either material modification or

termination of the Settlement Agreement.

78. In addition to the grounds set forth above, Defendant shall have the right, but not the obligation, to terminate the Settlement Agreement if 1% or more of the Settlement Class Members submit timely and valid Requests for Exclusion by the Opt-Out Date.

79. The Parties agree to work in good faith to effectuate this Settlement Agreement.

80. If a Party elects to terminate this Settlement Agreement under this Section XIV, that Party must provide written notice to the other Party's counsel, by hand delivery, mail, or e-mail within ten (10) Days of the occurrence of the condition permitting termination.

81. Nothing shall prevent Plaintiffs or Defendant from appealing or seeking other appropriate relief from an appellate court with respect to any denial by the Court of final approval of the Settlement.

82. If this Settlement Agreement is terminated or disapproved, or if the Effective Date should not occur for any reason, then: (i) this Settlement Agreement, the Preliminary Approval Order, the Final Approval Order and Final Judgment (if applicable), and all of their provisions shall be rendered null and void; (ii) all Parties shall be deemed to have reverted to their respective status in the lawsuit as of the date and time immediately preceding the execution of this Settlement Agreement; (iii) except as otherwise expressly provided, the Parties shall stand in the same position and shall proceed in all respects as if this Settlement Agreement and any related orders had never been executed, entered into, or filed; and (iv) no term or draft of this Settlement Agreement nor any part of the Parties' settlement discussions, negotiations, or documentation (including any declaration or brief filed in support of the motion for preliminary approval or motion for final approval), nor any rulings regarding class certification for settlement purposes (including the Preliminary Approval Order and, if applicable, the Final Approval Order and Final Judgment),



will have any effect or be admissible into evidence for any purpose in the lawsuit or any other proceeding.

83. If the Court does not approve the Settlement or the Effective Date cannot or does not occur for any reason, Defendant shall retain all its rights and defenses in the lawsuit. For example, Defendant shall have the right to object to the maintenance of the lawsuit as a class action, to move for summary judgment, and to assert defenses at trial, and nothing in this Settlement Agreement or other papers or proceedings related to the Settlement shall be used as evidence or argument by any Party concerning whether the lawsuit may properly be maintained as a class action, or for any other purpose.

## **XV. RELEASE**

84. The Final Approval Order and Final Judgment shall provide that the Litigation is dismissed with prejudice as to the Plaintiffs and all Settlement Class Members, except those who timely and validly opt out of the Settlement.

85. On the Effective Date, Plaintiffs and each and every Settlement Class Member, except those who timely and validly opt out of the Settlement, shall be bound by this Settlement Agreement and shall have recourse only to the benefits, rights, and remedies provided hereunder. No other action, demand, suit, arbitration, or other claim or proceeding, regardless of forum, may be pursued against Released Parties with respect to the Released Claims.

86. On the Effective Date and in consideration of the promises and covenants set forth in this Settlement Agreement, Plaintiffs will be deemed to have fully, finally, and forever completely released, relinquished, and discharged the Released Parties from any and all past, present, and future claims, counterclaims, lawsuits, set-offs, demands, charges, complaints, actions, suits, liabilities, rights, causes of action, disputes, contracts or agreements, extra-contractual claims, damages, punitive damages, exemplary damages, multiplied damages,

expenses, costs, debts, penalties, losses, attorneys' fees, or obligations of every nature and description whatsoever, actual, potential, filed, known or Unknown, claimed or unclaimed, suspected or unsuspected, in law or in equity, fixed or contingent, accrued or unaccrued, direct or indirect, individual or representative, and matured or not matured, that arise out of, or are based upon or connected to, or relate in any way to the Website Usage Disclosure, the allegations in the Complaint and Litigation, or any facts, transactions, events, matters, occurrences, acts, disclosures, statements, representations, omissions or failures to act regarding any alleged disclosure of the Plaintiffs' personal information and/or personal health information to any third party, including all claims that were brought or could have been brought in the Litigation (the "Plaintiffs' Release"). The Plaintiffs' Release shall be included as part of the Final Approval Order and Final Judgment so that all claims released thereby shall be barred by principles of res judicata, collateral estoppel, claim and issue preclusion, and settlement and release (the "Plaintiffs' Released Claims"). The Plaintiffs' Release shall constitute and may be raised as a complete defense to any proceeding arising from, relating to, or filed in connection with the Plaintiffs' Released Claims.

87. On the Effective Date and in consideration of the promises and covenants set forth in this Settlement Agreement, each Settlement Class Member will be deemed to have fully, finally, and forever completely released, relinquished, and discharged the Released Parties from any and all past, present, and future claims, counterclaims, lawsuits, set-offs, demands, charges, complaints, actions, suits, liabilities, rights, causes of action, disputes, contracts or agreements, extra-contractual claims, damages, punitive damages, exemplary damages, multiplied damages, expenses, costs, debts, penalties, attorneys' fees or obligations, of every nature and description whatsoever, actual, potential, filed, known or Unknown, claimed or unclaimed, suspected or unsuspected, in law or in equity, fixed or contingent, accrued or unaccrued, direct or indirect,

individual or representative, and matured or not matured, that arise out of, or are based upon or connected to, or relate in any way to the Website Usage Disclosure, the allegations in the Complaint and Litigation, or any facts, transactions, events, matters, occurrences, acts, disclosures, statements, representations, omissions or failures to act regarding the alleged disclosure of the Settlement Class Members' personal information and/or personal health information to any third party, including all claims that were brought or could have been brought in the Litigation (the "Settlement Class Release"). The Settlement Class Release shall be included as part of the Final Approval Order and Final Judgment so that all claims released thereby shall be barred by principles of res judicata, collateral estoppel, claim and issue preclusion, and settlement and release (the "Released Class Claims"). The Settlement Class Release shall constitute and may be raised as a complete defense to any proceeding arising from, relating to, or filed in connection with the Released Class Claims. In the event any Settlement Class Member attempts to prosecute an action in contravention of a Final Approval Order and Final Judgment or the Settlement Agreement, counsel for any of the Parties may forward the Settlement Agreement and the Final Approval Order and Final Judgment to such Settlement Class Member and advise such Settlement Class Member of the Releases provided pursuant to the Settlement Agreement. If so requested by Defendant or counsel for Defendant, Class Counsel shall provide this notice.

88. Subject to Court approval, upon entry of the Final Approval Order, Plaintiffs and all Settlement Class Members shall be bound by this Settlement Agreement and the releases herein and all Released Claims shall be dismissed with prejudice and released.

89. The Released Claims include the release of Unknown Claims. "Unknown Claims" means claims relating in any way to the subject matter of the Complaint that could have been raised in the Litigation and that any of the Plaintiffs or Settlement Class Members, and each of their

respective heirs, executors, administrators, representatives, agents, partners, trustees, successors, attorneys, and assigns do not know to exist or suspect to exist, which, if known by him or her, might affect his or her agreement to release Defendant and all other Released Parties, or might affect his or her decision to agree to, or object or not to object to the Settlement. With respect to any and all Released Claims, the Parties stipulate and agree that upon the Effective Date, Plaintiffs (on behalf of themselves and each Settlement Class Member) expressly shall have, and by operation of the Final Approval Order and Final Judgment the Settlement Class Members shall have, released any and all Released Claims, including Unknown Claims. Plaintiffs (on behalf of themselves and each Settlement Class Member) may hereafter discover facts in addition to, or different from, those that they now know or believe to be true with respect to the subject matter of the Released Claims, but Plaintiffs (on behalf of themselves and each Settlement Class Member) expressly shall have, and by operation of the Final Approval Order and Judgment the Settlement Class Members shall have, upon the Effective Date, fully, finally, and forever settled and released any and all Released Claims, including Unknown Claims.

90. With respect to any and all Released Claims, the Parties stipulate and agree that upon the Effective Date, Plaintiffs and Settlement Class Members shall have waived any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, the District of Columbia, or principle of common law or otherwise, which includes or is similar, comparable, or equivalent to Cal. Civ. 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.

The Plaintiffs and Class Counsel acknowledge, and each Settlement Class Member by operation

of law shall be deemed to have acknowledged, that the inclusion of “Unknown Claims” in the definition of Released Claims was separately bargained for and was a material term of the Settlement Agreement.

91. On entry of the Final Approval Order and Final Judgment, the Plaintiffs and Settlement Class Members shall be enjoined from prosecuting, respectively, the Plaintiffs’ Released Claims and the Released Class Claims, in any proceeding in any forum against any of the Released Parties or based on any actions taken by any Released Parties authorized or required by this Settlement Agreement or the Court or an appellate court as part of this Settlement.

92. The Parties agree that the Released Parties will suffer irreparable harm if any Settlement Class Member asserts any of the Released Claims against any Released Parties, and that in that event, the Released Parties may seek an injunction as to such action without further showing of irreparable harm in this or any other forum.

93. Without in any way limiting the scope of the Plaintiffs’ Release or the Settlement Class Release (the “Releases”), the Releases cover, without limitation, any and all claims for attorneys’ fees, costs or disbursements incurred by Class Counsel or any other counsel representing Plaintiffs or Settlement Class Members, or any of them, in connection with or related in any manner to the Litigation (except for the Attorneys’ Fees, Costs, and Expenses Award to be paid to Class Counsel as specifically provided in Section X), the Website Usage Disclosure, Defendant’s conduct alleged in the Complaint and Litigation, the Settlement, the administration of such Settlement and/or the Released Claims as well as any and all claims for the Service Awards to Plaintiffs.

94. Nothing in the Releases shall preclude any action to enforce the terms of this Settlement Agreement, including participation in any of the processes detailed herein. Nor shall

the Releases be construed to release claims arising out of physical injuries alleged to arise from any medical treatment that Plaintiffs and Settlement Class Members may have received from Defendant.

#### **XVI. EFFECTIVE DATE**

95. The “Effective Date” of this Settlement Agreement shall be the first Day after the date when all of the following conditions have occurred:

- a. This Settlement Agreement has been fully executed by all Parties and their counsel;
- b. Orders have been entered by the Court certifying the Settlement Class, granting preliminary approval of this Settlement Agreement and approving the Notice Program and Claim Form, all as provided above;
- c. The Court-approved Postcard/Email Notice has been mailed/emailed, other notice required by the Notice Program, if any, has been effectuated and the Settlement Website has been duly created and maintained as ordered by the Court;
- d. The Court has entered a Final Approval Order finally approving this Settlement Agreement, as provided above; and
- e. The Final Approval Order and Final Judgment have become Final, as defined in Paragraph 10(q).

#### **XVII. MISCELLANEOUS PROVISIONS**

96. The recitals and exhibits to this Settlement Agreement are integral parts of the Settlement and are expressly incorporated and made a part of this Settlement Agreement.

97. This Settlement Agreement is for settlement purposes only. Neither the fact of nor any provision contained in this Settlement Agreement nor any action taken hereunder shall constitute or be construed as an admission of the validity of any claim or any fact alleged in the

Complaint or Litigation or of any wrongdoing, fault, violation of law or liability of any kind on the part of Defendant or any admission by Defendant of any claim in this Litigation or allegation made in any other proceeding, including regulatory matters, directly or indirectly involving the Website Usage Disclosure or allegations asserted in the Complaint and Litigation. This Settlement Agreement shall not be offered or be admissible in evidence against the Parties or cited or referred to in any action or proceeding between the Parties, except in an action or proceeding brought to enforce its terms. Nothing contained herein is or shall be construed or admissible as an admission by Defendant that Plaintiffs' claims, or any similar claims, are suitable for class treatment.

98. In the event that there are any developments in the effectuation and administration of this Settlement Agreement that are not dealt with by the terms of this Settlement Agreement, then such matters shall be dealt with as agreed upon by the Parties, and failing agreement, as shall be ordered by the Court. The Parties agree to execute all documents and use their best efforts to perform all acts necessary and proper to promptly effectuate the terms of this Settlement Agreement and to take all necessary or appropriate actions to obtain judicial approval of this Settlement Agreement to give this Settlement Agreement full force and effect. The Parties further agree to reasonably cooperate in the defense of this Settlement Agreement against Objections made to the Settlement or a Final Approval Order and Final Judgment, including at the Final Approval Hearing, or in any appeal from a Final Approval Order and Final Judgment, or in any collateral attack on this Settlement Agreement or a Final Approval Order and Final Judgment; provided, however, that Defendant shall have sole discretion in deciding whether Defendant will make any filing in respect of any objection, appeal, or collateral attack regarding the Settlement.

99. No person shall have any claim against Plaintiffs, Class Counsel, Defendant, Defendant's Counsel, the Settlement Administrator, or the Released Parties, or any of the

foregoing's agents or representatives based on the administration of the Settlement substantially in accordance with the terms of the Settlement Agreement or any order of the Court or appellate court.

100. This Settlement Agreement constitutes the entire Settlement Agreement between and among the Parties with respect to the Settlement of the Litigation. This Settlement Agreement supersedes all prior negotiations and agreements between the Parties regarding settlement. The Parties acknowledge, stipulate, and agree that no covenant, obligation, condition, representation, warranty, inducement, negotiation, or understanding concerning any part of the subject matter of this Settlement Agreement has been made or relied on except as expressly set forth in this Settlement Agreement.

101. There shall be no waiver of any term or condition in this Settlement Agreement absent an express writing to that effect by the waiving Party. No waiver of any term or condition in this Settlement Agreement shall be construed as a waiver of a subsequent breach or failure of the same term or condition, or waiver of any other term or condition of this Settlement Agreement.

102. Defendant shall not be liable for any additional attorneys' fees and expenses of any Settlement Class Members' counsel, including any potential objectors or counsel representing a Settlement Class Member individually, other than what is expressly provided for in this Settlement Agreement. Class Counsel agree to hold Defendant harmless from any claim regarding the division of any Attorneys' Fees, Costs, and Expenses Award, and any claim that the term "Class Counsel" fails to include any counsel, individual, or firm who claims that they are entitled to a share of any Attorneys' Fees, Costs, and Expenses Award in this Litigation.

103. In the event a third party, such as a bankruptcy trustee, former spouse, or other third party has or claims to have a claim against any payment made to a Settlement Class Member, it is



the responsibility of the Settlement Class Member to transmit the funds to such third party. Unless otherwise ordered by the Court, the Parties will have no, and do not agree to any, responsibility for such transmittal.

104. This Settlement Agreement shall not be construed more strictly against one Party than another merely because it may have been prepared by counsel for one of the Parties, it being recognized that because of the arm's-length negotiations resulting in this Settlement Agreement, all Parties hereto have contributed substantially and materially to the preparation of the Settlement Agreement. All terms, conditions, and exhibits are material and necessary to this Settlement Agreement and have been relied upon by the Parties in entering into this Settlement Agreement.

105. The 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. Amendments and modifications may be made without additional notice to the Settlement Class Members unless such notice is required by the Court.

106. This Settlement Agreement shall be construed under and governed by the laws of the State of Florida without regard to its choice of law provisions.

107. The Parties and each Settlement Class Member irrevocably submit to the exclusive jurisdiction of the Court for any suit, action, proceeding, or dispute arising out of or relating to this Settlement Agreement or the applicability of the Settlement Agreement and its exhibits, but for no other purpose.

108. If Plaintiffs or Class Counsel intend to issue any press release or to make any posting on a website or social media concerning the Settlement, the language of such press release or posting must be approved in advance and in writing by Defendant, such approval not to be unreasonably withheld.

109. Neither Plaintiffs nor Class Counsel shall make, publish, or state, or cause to be made, published, or stated, any defamatory or disparaging statement, writing or communication pertaining to Defendant or its directors, officers, employees, attorneys, and/or affiliates, or any Related Entities.

110. All agreements made and orders entered during the course of the Litigation relating to the confidentiality of information shall survive this Agreement, including but not limited to those relating to all information exchanged for purposes of mediation or under the auspices of Federal Rule of Evidence 408 or any state law equivalent.

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

112. This Settlement Agreement will be binding upon and inure to the benefit of the successors and assigns of the Parties, Released Parties, and Settlement Class Members.

113. The headings used in this Settlement Agreement are for the convenience of the reader only and shall not affect the meaning or interpretation of this Settlement Agreement. In construing this Settlement Agreement, the use of the singular includes the plural (and vice-versa) and the use of the masculine includes the feminine (and vice-versa).

114. The Parties agree to seek a stay all proceedings in the Litigation until the approval

of this Settlement Agreement has been finally determined, except the stay of proceedings shall not prevent the filing of any motions, affidavits, and other matters necessary to obtain and preserve judicial approval of this Settlement Agreement.

115. This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original as against any Party who has signed it and all of which shall be deemed a single Settlement Agreement. Scanned signatures, electronic signatures, or signatures sent by email or facsimile shall be as effective as original signatures.

116. Each Party to this Settlement Agreement and the signatories thereto warrant that he, she, or it is acting upon his, her or its independent judgment and the advice of his, her, or its counsel and not in reliance upon any warranty or representation, express or implied, of any nature or kind by any other Party, other than the warranties and representations expressly made in this Settlement Agreement.

117. Each signatory below warrants that he or she has authority to execute this Settlement Agreement and bind the Party on whose behalf he or she is executing the Settlement Agreement.

IN WITNESS WHEREOF, the Parties have hereby accepted and agreed to the Settlement Agreement.

**Approved as to form and content by counsel for Plaintiffs and the Settlement Class:**



\_\_\_\_\_  
Gary M. Klinger  
Milberg Coleman Bryson Phillips Grossman  
227 W. Monroe Street, Suite 2100  
Chicago, IL 60606  
Tel: 866.252.0878  
gklinger@milberg.com

Dated: 7/1/2024

Approved as to form and content by counsel for Defendant:



Robert D. Griest  
King & Spalding LLP  
1180 Peachtree Street, NE Suite 1600  
Atlanta, Georgia 30309  
Tel: 404.572.2824  
rgriest@kslaw.com

Dated: 7/1/2024

Approved as to form and content by Defendant:

DocuSigned by:  
  
0E7ECADECD58403

Name: Kathleen waters

Title: Chief Legal and Public Policy Officer

DaVita Inc.

Dated: July 1, 2024

KENNETH KOSKOSKY

*Kenneth Koskosky*  
Kenneth Koskosky (Jul 1, 2024 17:22 EDT)

Date: 7/1/2024

VICTORIA WITHERBY

*[Signature]*  
Victoria Witherby (Jul 1, 2024 14:31 PDT)

Date: 7/1/2024

SANDRA HOOVER

*Sandra Hoover*  
Sandra Hoover (Jul 1, 2024 15:56 PDT)

Date: 7/1/2024

DAVITA INC.

DocuSigned by:  
*Kathleen Waters*  
0E7ECADEC058463...  
Signature

Printed: Kathleen Waters

Title: Chief Legal and Public Policy Officer

Date: July 1, 2024

# **EXHIBIT A**

**Your claim must be  
submitted online or  
postmarked by:  
[DEADLINE]**

\_\_\_\_ et al. v. DaVita Inc.

Case No. \_\_\_\_\_

In the Seventeenth Judicial District in and for Broward County, Florida

**DAVITA-CLAIM**

## **DAVITA PIXEL SETTLEMENT CLAIM FORM**

### **GENERAL INSTRUCTIONS**

You are eligible to submit a Claim Form in the DaVita Pixel Settlement if you are a Settlement Class Member.

The **Settlement Class** includes: All U.S. persons who are, or have been, patients of DaVita who were treated at DaVita's U.S. clinics and who visited any websites, patient portals, and/or mobile applications owned, operated, or managed directly or indirectly by DaVita or its subsidiaries or affiliates at least once between November 20, 2017 and up to and including September 21, 2023.

### **SETTLEMENT CLASS MEMBER BENEFITS**

**Compensation to Settlement Class Members.** Settlement Class Members must submit a valid Claim Form in order to receive a settlement benefit. Claims will be subject to review for completeness by the Settlement Administrator. For claims deemed invalid, the Settlement Administrator will provide claimants with an opportunity to cure in the manner set forth below.

All Settlement Class members who submit a valid claim form can elect to receive (1) Privacy Shield, a data protection and monitoring service, for one year and/or (2) a Cash Compensation payment for a pro rata share of the Settlement Fund.

1. **Privacy Shield.** Settlement Class Members may enroll in one year of Privacy Shield, a data protection and monitoring service. *Be sure to provide an email address in Section I of the Claim Form to receive information on how to activate your Privacy Shield protection.*
2. **Cash Compensation.** Settlement Class Members may file a claim for a cash payment that is allocated by proration.

Check one or both of these boxes if you would like to receive one-year of **Privacy Shield** and/or a **Cash Compensation** payment.

☐ I would like to receive Privacy Shield    ☐ I would like a Cash Compensation payment

You may select one or both benefit offered. The Settlement must become final before Cash Compensation payments are issued or the Privacy Shield service can be activated.

### **EMAIL ADDRESS FOR PRIVACY SHIELD**

Please provide an email address to receive your Privacy Shield protection activation code.

Email Address: \_\_\_\_\_

### **SUBMITTING YOUR CLAIM FORM**

QUESTIONS? VISIT [WWW.DAVITA-CLAIM.COM](http://WWW.DAVITA-CLAIM.COM) OR CALL TOLL-FREE 1-XXX-XXX-XXXX

**Your claim must be  
submitted online or  
postmarked by:  
[DEADLINE]**

\_\_\_\_\_ et al. v. DaVita, Inc.

Case No. \_\_\_\_\_

In the Seventeenth Judicial District in and for Broward County, Florida

**DAVITA-CLAIM**

**DAVITA PIXEL SETTLEMENT CLAIM FORM**

Claim Forms may be submitted online at **WEBSITE** by **DEADLINE** or completed and mailed to the Settlement Administrator **postmarked no later than DEADLINE**.

Mail your completed Claim Form by U.S. mail to:

DaVita Pixel Settlement  
Attn: Claim Form Submissions  
P.O. Box XXXXX  
New York, NY XXXXXX

If your Claim Form is incomplete or missing information, the Settlement Administrator may contact you for additional information. If you do not respond and your claim is denied, you will not receive settlement benefits. If you have any questions, please contact the Settlement Administrator by email at **EMAIL ADDRESS**, by mail at the address listed above, or by phone at the toll-free number below.

**I. CLAIMANT INFORMATION**

Provide your contact information below. It is your responsibility to notify the Settlement Administrator of any changes to your contact information.

**First Name**

**Last Name**

**Street Address**

**City**

**State**

**Zip Code**

**Email Address (Optional)**

**Phone Number**

**Notice ID Number**

**Your Notice ID Number may be found on the Notice that you received in the mail or by email. If you have lost or misplaced your Notice containing the Notice ID Number, you may contact the Settlement Administrator at 1-XXX-XXX-XXXX to request a replacement. You must provide proof of class membership to the Settlement Administrator to receive a replacement code.**

**II. PAYMENT SELECTION**

Please select **one** of the following payment options:

☐ **PayPal** - Enter your PayPal email address: \_\_\_\_\_

☐ **Venmo** - Enter the mobile number associated with your Venmo account: \_\_\_\_-\_\_\_\_-\_\_\_\_

☐ **Zelle** - Enter the mobile number or email address associated with your Zelle account: \_\_\_\_\_

**QUESTIONS? VISIT **WWW.\_\_\_\_\_.COM** OR CALL TOLL-FREE 1-**XXX-XXX-XXXX****



**Your claim must be  
submitted online or  
postmarked by:  
[DEADLINE]**

\_\_\_\_\_ *et al. v. DaVita, Inc.*

Case No. \_\_\_\_\_

In the Seventeenth Judicial District in and for Broward County, Florida

**DAVITA-CLAIM**

**DAVITA PIXEL SETTLEMENT CLAIM FORM**

Mobile Number: \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_ or Email Address: \_\_\_\_\_

☐ **Virtual Prepaid Card** - Enter your email address: \_\_\_\_\_

☐ **Physical Check** - Payment will be mailed to the address provided in Section I above.

**III. AFFIRMATION & SIGNATURE**

By signing below and submitting this Claim Form, I affirm under penalty of perjury under the laws of the United States that I am, or was, a patient of DaVita treated at one of DaVita's U.S. clinics and I visited a website, patient portal, and/or mobile application owned, operated, or managed directly or indirectly by DaVita or its subsidiaries or affiliates at least once between November 20, 2017 and up to and including September 21, 2023. I further affirm that the information provided in this Claim Form is true and correct to the best of my knowledge.

Signature: \_\_\_\_\_ Printed Name: \_\_\_\_\_ Date: \_\_\_\_\_

# **EXHIBIT B**

**If you are a current or past patient of DaVita and visited one of its websites, patient portals, or mobile applications at least once between November 20, 2017, and September 21, 2023, you may be entitled to benefits from a settlement.**

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

- A \$3,800,000 settlement has been reached in a class action lawsuit against DaVita Inc. (“Defendant” or “DaVita”), over Defendant DaVita’s alleged implementation and use of third-party web tracking and analytics tools on DaVita’s websites, patient portals, and mobile applications owned, operated, or managed by DaVita or its subsidiaries or affiliates. Plaintiffs allege that DaVita’s use of these tools disclosed their web usage data, containing personally identifiable information and protected health information, to Facebook, Google, and other third-parties. DaVita denies the allegations in the lawsuit. Plaintiffs and the Defendants have agreed to a Settlement. The Court has not decided in favor of either Party.
- You are a “Settlement Class Member” if you are, or were, a patient of DaVita who was treated at DaVita’s U.S. clinics and who visited any websites, patient portals, and/or mobile applications owned, operated, or managed directly or indirectly by DaVita or its subsidiaries or affiliates at least once between November 20, 2017, and up to and including September 21, 2023.
- If you are a Settlement Class Member, you may file a Claim Form to receive:
  - **Privacy Shield.** Settlement Class Members may enroll in one year of Privacy Shield, a data protection and monitoring service, and/or
  - **Cash Compensation.** Settlement Class Members may file a claim for a pro-rated cash payment, which will be calculated by dividing the Net Settlement Fund, less the cost of providing one year of Privacy Shield Services to Settlement Class Members who have made valid claims, by the total number of valid claims received.

**This Long-Form Notice explains your rights and options. Please read it carefully.**

These rights and options—and the deadlines to exercise them—are explained in this Notice.

Your Legal Rights and Options		Deadline
<b>SUBMIT A CLAIM FORM</b>	You must submit a Claim Form by mail or online to receive Settlement benefits.	<b>Month Day, 20YY</b>
<b>EXCLUDE YOURSELF</b>	Get no Settlement benefits. Keep your right to file your own lawsuit against the Defendant and Released Parties about the legal claims in this case.	<b>Month Day, 20YY</b>
<b>OBJECT</b>	Tell the Court why you do not like the Settlement. You will still be bound by the Settlement if the Court approves it.	<b>Month Day, 20YY</b>
<b>DO NOTHING</b>	Get no Settlement benefits. Be bound by the Settlement.	

- The Court in charge of this case must still decide whether to grant final approval of the Settlement

**Questions? Go to [www.xxxxxxxxxxxxxx.com](http://www.xxxxxxxxxxxxxx.com) or call (XXX) XXX-XXXX**

and the requested Attorneys' Fees, Costs and Expenses Award and Service Awards. No Settlement benefits or payments will be provided unless the Court approves the Settlement, and it becomes Final.

## BASIC INFORMATION

### 1. Why is this Long-Form Notice being provided?

A Court authorized this Long-Form Notice because you have the right to know about the proposed Settlement of a class action lawsuit and about your rights and options before the Court decides whether to grant final approval of the Settlement. This Long-Form Notice explains the lawsuit, the Settlement, your legal rights, what benefits are available, who is eligible for the benefits, and how to get them.

Judge [REDACTED] of the Seventeenth Judicial District in and for Broward County, Florida is overseeing this class action lawsuit. The case is known as *Kenneth Koskosky, Victoria Witherby, and Sandra v. DaVita Inc.*, No. [REDACTED]. The people who filed this lawsuit are called the "Plaintiffs" and the company sued is DaVita Inc.

### 2. What is this lawsuit about?

The lawsuit arises out of DaVita's alleged implementation and use of third-party web tracking and analytics tools on websites, patient portals, and mobile applications owned, operated, or managed directly or indirectly by DaVita or its subsidiaries or affiliates. Plaintiffs allege that DaVita's use of these tools disclosed their web usage data, containing personally identifiable information and protected health information, to Facebook, Google, and other third-parties. Plaintiffs' Complaint can be viewed at [www.XXXXXXXXXXX.com](http://www.XXXXXXXXXXX.com).

Defendant denies all claims asserted against it in the lawsuit, denies all allegations of wrongdoing and liability, and denies all material allegations of the Complaint.

### 3. Why is the lawsuit a class action?

In a class action, the "Class Representatives" or "Plaintiffs" sue on behalf of all people who have similar legal claims. In the event of a settlement, such as here, all these people are called a Settlement Class or Settlement Class Members. One court resolves the issues for all Settlement Class Members, except for those Settlement Class Members who timely and validly exclude themselves from the Settlement Class.

The Class Representatives in this case are Kenneth Koskosky, Victoria Witherby, and Sandra Hoover.

### 4. Why is there a Settlement?

Plaintiffs and Defendant do not agree regarding the legal claims made in this lawsuit. The lawsuit has not gone to trial, and the Court has not decided in favor of Plaintiffs or Defendant. Instead, Plaintiffs and Defendant have agreed to settle the lawsuit. Plaintiffs and the lawyers for the Settlement Class ("Class Counsel") believe the Settlement is best for all Settlement Class Members due to the risks and uncertainty associated with continuing the lawsuit.

**Questions? Go to [www.xxxxxxxx.com](http://www.xxxxxxxx.com) or call (XXX) XXX-XXXX**

## WHO IS INCLUDED IN THE SETTLEMENT?

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

Under the Settlement, the Court decided that the Settlement Class includes all U.S. persons who are, or have been, patients of Defendant who were treated at Defendant's U.S. clinics and who visited any websites, patient portals, and/or mobile applications owned, operated, or managed directly or indirectly by Defendant or its subsidiaries or affiliates at least once between November 20, 2017 and up to and including September 21, 2023.

### 6. Are there exceptions to being included in the Settlement?

Yes. Excluded from the Settlement Class are (i) DaVita, any entity in which DaVita has a controlling interest, and DaVita's affiliates, parents, subsidiaries, officers, directors, legal representatives, successors, and assigns; (ii) any judge, justice, or judicial officer presiding over the lawsuit and the members of their immediate families and judicial staff; and (iii) any individual who timely and validly excludes themselves from the Settlement.

### 7. What is the "Website Usage Disclosure?"

"Website Usage Disclosure" means the alleged disclosure of personal information of Plaintiffs and Settlement Class Members to Facebook, Google, or other third-parties via web tracking or analytics tools allegedly used on websites, patients portals, and mobile applications owned, operated, or managed directly or indirectly by DaVita or its subsidiaries or affiliates from November 20, 2017 through September 21, 2023.

### 8. What if I am still not sure whether I am part of the Settlement?

If you are still not sure whether you are a Settlement Class Member, you may go to the Settlement Website at [www.xxxxxxxxxxxx.com](http://www.xxxxxxxxxxxx.com) for additional information.

## THE SETTLEMENT BENEFITS—WHAT YOU GET IF YOU QUALIFY

### 9. What does the Settlement provide?

Under the Settlement, Defendant has agreed to create a \$3,800,000 Settlement Fund. The Settlement Fund will be used to pay for: (i) reasonable Notice and Claims Administration Costs incurred pursuant to the Settlement Agreement, (ii) any taxes owed by the Settlement Fund, (iii) any Service Awards approved by the Court, (iv) any Attorneys' Fees, Costs, and Expenses Award as approved by the Court, and (v) any benefits to Settlement Class Members, pursuant to the terms and conditions of the Settlement Agreement. The money remaining for payment of benefits to Settlement Class Members is called the "Net Settlement Fund."

If you are a Settlement Class Member, and you file a valid and timely Claim Form by **<Claims Deadline>**, you may be eligible for the following Settlement benefits:

- **Privacy Shield.** Settlement Class Members may enroll in one year of Privacy Shield, a data protection and monitoring service, and
- **Cash Compensation.** Settlement Class Members may file a claim for a cash payment that will be calculated by first subtracting from the Net Settlement Fund the total cost of all valid

**Questions? Go to [www.xxxxxxxxxxxx.com](http://www.xxxxxxxxxxxx.com) or call (XXX) XXX-XXXX**

Privacy Shield claims, and then dividing the remaining amount by the number of valid Cash Compensation claims (so that all Cash Compensation claim payments will be equal).

#### 10. What am I giving up to receive Settlement benefits or stay in the Settlement Class?

Unless you exclude yourself, you are choosing to remain in the Settlement Class. If the Settlement is approved and becomes Final, the Court's orders will apply to you and legally bind you. You will not be able to sue, continue to sue, or be part of any other lawsuit against the Defendant and the Released Parties about the legal issues in this lawsuit that are released by this Settlement. The specific rights you are giving up are called "Released Class Claims."

#### 11. What are the Released Class Claims?

The Settlement Agreement in Section XV describes the Release, Released Claims, and the Released Parties in necessary legal terminology, so please read this section carefully. The Settlement Agreement is available at [www.xxxxxxxx.com](http://www.xxxxxxxx.com) or in the public court records on file in this lawsuit. For questions regarding the Release and what it means, you can also contact one of the lawyers listed in Question 15 for free, or you can talk to your own lawyer at your own expense.

### HOW TO GET BENEFITS FROM THE SETTLEMENT

#### 12. How do I make a claim for Settlement benefits?

To receive Settlement benefits, you must file a valid Claim Form. Your Claim Form must be complete and submitted to the Settlement Administrator, submitted online or mailed and **postmarked** on or before **<Claims Deadline>**. Claim Forms may be submitted online at [www.xxxxxxxx.com](http://www.xxxxxxxx.com) or printed from the website and mailed to the Settlement Administrator at the address on the form. The quickest way to submit a Claim Form is online. Claim Forms are also available by writing to:

DaVita Pixel Settlement Administrator  
PO Box XXXX  
New York, NY XXXXX-XXXX

#### 13. What happens if my contact information changes after I submit a claim?

If you change your mailing address or email address after you submit a Claim Form, it is your responsibility to inform the Settlement Administrator of your updated information. You may notify the Settlement Administrator of any changes by calling (XXX) XXX-XXXX or by writing to:

DaVita Pixel Settlement Administrator  
PO Box XXXX  
Portland, OR XXXXX-XXXX

#### 14. When will I receive my Settlement benefits?

If you file a valid Claim Form, you will receive information via email regarding how to activate your Privacy Shield benefits, and your payment will be provided by the Settlement Administrator, after the Settlement is approved by the Court and becomes Final.

It may take time for the Settlement to be approved and become Final. Please be patient and check [www.xxxxxxxxxxxxxx.com](http://www.xxxxxxxxxxxxxx.com) for updates.

### THE LAWYERS REPRESENTING YOU

**Questions? Go to [www.xxxxxxxx.com](http://www.xxxxxxxx.com) or call (XXX) XXX-XXXX**

### 15. Do I have a lawyer in this case?

Yes, the Court has appointed the law firm Milberg Coleman Bryson Phillips Grossman located at 201 Sevilla Avenue, Suite 200 Coral Gables, FL 33134 as Class Counsel to represent you and the Settlement Class for the purposes of this Settlement. You may hire your own lawyer at your own cost and expense if you want someone other than Class Counsel to represent you in this lawsuit.

### 16. How will Class Counsel be paid?

Class Counsel will file a motion asking the Court for a reasonable Attorneys' Fees, Costs, and Expenses Award not to exceed thirty-five percent (35%) of the amount of the Settlement Fund, which shall include the retail value of the Privacy Shield services, plus reasonable costs and expenses incurred in prosecuting the litigation.

Class Counsel will also ask the Court to approve a Service Award of \$2,500 from the Settlement Fund to each Class Representative, for participating in this lawsuit and for their efforts in achieving the Settlement. The Court may award less than the amounts requested by Class Counsel.

Class Counsel's application for a reasonable Attorneys' Fees, Costs and Expenses Award and the Service Awards will be made available on the Settlement Website at [www.xxxxxxxxxx.com](http://www.xxxxxxxxxx.com) before the deadline for you to comment or object to the Settlement.

## EXCLUDING YOURSELF FROM THE SETTLEMENT

If you are a Settlement Class Member and you want to keep any right you may have to sue or continue to sue Defendant and Released Parties on your own based on the legal claims raised in this lawsuit or released by the Released Class Claims, then you must take steps to get out of the Settlement. This is called excluding yourself from – or “opting out” of – the Settlement.

### 17. How do I get out of the Settlement?

You may request to be excluded from the Settlement Class in writing by sending a letter to the Settlement Administrator. Your request must be **postmarked** on or before **Month DD, 20YY**. Your request must include the following:

- The case name and number of the lawsuit [*Kenneth Koskosky, Victoria Witherby, and Sandra Hoover v. DaVita*, No. \_\_\_\_\_]
- Your full name, address, and telephone number;
- A statement that you wish to be excluded from the Settlement Class;
- A statement as to whether you visited a website, patient portal, or mobile application owned, operated, or managed directly or indirectly by DaVita or its subsidiaries or affiliates at least once between November 20, 2017 and up to and including September 21, 2023; and
- Your personal and original signature.

You may only request exclusion for yourself. “Mass Opt-Outs” requesting exclusion of more than one Settlement Class Member will be deemed invalid by the Settlement Administrator.

A written notice to be excluded that is sent to an address other than designated below, or that is not postmarked within the time specified, will be invalid and the person making the request will be considered a member of the Settlement Class and will be bound as a Settlement Class Member by the Settlement Agreement, if approved.

Your notice to be excluded must be **postmarked** and sent to the Settlement Administrator at the following address by **Month Day, 20YY**:

**Questions? Go to [www.xxxxxxxxxx.com](http://www.xxxxxxxxxx.com) or call (XXX) XXX-XXXX**

DaVita Pixel Settlement Administrator  
Exclusions  
PO Box XXXX  
Portland, OR XXXXX-XXXX

**18. If I exclude myself, can I still get anything from this Settlement?**

No. If you exclude yourself, you are telling the Court you do not want to be part of the Settlement. You can get benefits from the Settlement only if you stay in the Settlement and submit a valid Claim Form.

**Questions? Go to [www.xxxxxxxxxx.com](http://www.xxxxxxxxxx.com) or call (XXX) XXX-XXXX**



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

No. Unless you exclude yourself, you give up any right to sue the Defendant and Released Parties for the claims resolved by this Settlement. You must exclude yourself from this lawsuit to start or continue your own lawsuit or to be part of any other lawsuit against the Defendant or any of the Released Parties. If you have a pending lawsuit, speak to your lawyer in that case immediately.

## OBJECT TO THE SETTLEMENT

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

If you are a Settlement Class Member, you can tell the Court you do not agree with all or any part of the Settlement or the requested Attorneys' Fees, Costs and Expenses Award or Service Awards. You can also give reasons why you think the Court should not approve the Settlement or the Attorneys' Fees, Costs and Expenses Award or Service Awards.

To object, you must file a timely written notice of your Objection, so it is **filed by Month Day, 20YY**. Such notice must:

- Include the case name and number of the lawsuit [*Kenneth Koskosky, Victoria Witherby, and Sandra Hoover v. DaVita*, No. \_\_\_\_\_]
- Included your full name, current address, telephone number, and email address;
- Include your personal and original signature;
- Contain proof that you are a Settlement Class Member, including an attestation under the laws of the United States that you are, or have been, a patient of Defendant and visited any websites, patient portals, and/or mobile applications owned, operated, or managed directly or indirectly by Defendant or its subsidiaries or affiliates at least once between November 20, 2017 and September 21, 2023;
- State that you object to the Settlement, in whole or in part;
- Set forth a statement of the legal and factual basis for your Objection;
- Provide copies of any documents that you wish to submit in support of your position;
- Identify any counsel representing you with respect to, or who provided assistance to you in drafting, your Objection (and include the signature, name, address, telephone number, and email address of your counsel);
- Contain a list, including case name, court, and docket number, of all other cases in which you and/or your counsel has filed an objection to any proposed class action settlement in the past three (3) years;
- State whether the Objection applies only to you, to a specific subset of the Settlement Class, or to the entire Settlement Class; and
- State whether you intend to appear at the Final Approval Hearing, and if so, whether personally or through counsel.

To be timely, written notice of an objection in the appropriate form **must be filed** with the Court by **<Objection Deadline>**, and copies may be sent to Class Counsel and Defendants. The addresses for each are as follows:

THE COURT	CLASS COUNSEL	DEFENDANT'S COUNSEL
<<Court Address>>	Gary M. Klinger Milberg Coleman Bryson Phillips Grossman 227 W. Monroe Street, Suite 2100 Chicago, Illinois 60606	Robert Griest King & Spalding, LLP 1180 Peachtree Street NE, Suite 1600 Atlanta, Georgia 30309

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

Objecting is simply telling the Court you do not like something about the Settlement or the requested Attorneys' Fees, Costs, and Expenses Award or Service Awards. You can object only if you stay in the Settlement Class (i.e., if you do not exclude yourself). Requesting exclusion is telling the Court you do not want to be part of the Settlement Class or the Settlement. If you exclude yourself, you cannot object to the Settlement.

## THE FINAL APPROVAL HEARING

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

The Court will hold a Final Approval Hearing on **Month Day, 20YY, at X:XX a.m./p.m.** before Judge \_\_\_\_\_ of the Seventeenth Judicial District in and for Broward County, Florida, [Address], in Courtroom \_\_\_\_\_.

At the Final Approval Hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate and decide whether to approve: the Settlement, Class Counsel's application for reasonable Attorneys' Fees, Costs and Expenses Award and for Service Awards. If there are Objections, the Court will consider them. The Court will also listen to people who have asked to speak at the hearing. The Court can only approve or deny the Settlement Agreement. It cannot change the terms of the Settlement.

Note: The date and time of the Final Approval Hearing are subject to change. The Court may also decide to hold the hearing via videoconference or by phone. Any change will be posted at [www.xxxxxxxxxxx.com](http://www.xxxxxxxxxxx.com).

### 23. Do I have to attend to the Final Approval Hearing?

No. Class Counsel will answer any questions the Court may have. However, you are welcome to attend at your own expense. If you file an objection, you do not have to attend the hearing to speak about it. As long as you file your written objection on time, the Court will consider it.

### 24. May I speak at the Final Approval Hearing?

Yes, as long as you do not exclude yourself, you can (but you do not have to) participate and speak for yourself at the Final Approval Hearing at your own expense. This is called making an appearance. You also can have your own lawyer speak for you, but you will have to hire and pay for your own lawyer. If you choose to make an appearance, you must follow all of the procedures for objecting to the Settlement listed in Question 19 above and specifically include a statement whether you and your counsel will appear at the Final Approval Hearing.

**Questions? Go to [www.xxxxxxxxxxx.com](http://www.xxxxxxxxxxx.com) or call (XXX) XXX-XXXX**

## IF YOU DO NOTHING

### 25. What happens if I do nothing at all?

If you are a Settlement Class Member and you do nothing, you will not receive any Settlement benefits. You will give up rights explained in the “Excluding Yourself from the Settlement” section of this Long-Form Notice, including your right to start or continue a lawsuit, or be part of any other lawsuit against the Defendant or any of the Released Parties about the legal issues in this lawsuit that are released by the Settlement Agreement.

## GETTING MORE INFORMATION

### 26. How do I get more information?

This Long-Form Notice summarizes the proposed Settlement. Complete details are provided in the Settlement Agreement. The Settlement Agreement and other related documents are available at [www.xxxxxxxxxx.com](http://www.xxxxxxxxxx.com), by calling (XXX) XXX-XXXX, or by writing to:

DaVita Pixel Settlement Administrator  
PO Box XXXX  
New York, NY XXXXX-XXXX

**PLEASE DO NOT TELEPHONE THE COURT, THE COURT’S CLERK OFFICE, OR  
DAVITA OR ITS COUNSEL REGARDING THIS NOTICE.**

**Questions? Go to [www.xxxxxxxxxx.com](http://www.xxxxxxxxxx.com) or call (XXX) XXX-XXXX**

# **EXHIBIT C**

**LEGAL NOTICE**  
**ONLY TO BE OPENED BY  
THE INTENDED RECIPIENT**

The Seventeenth Judicial  
District for Broward County,  
Florida has authorized this  
Notice.

*This is not a solicitation from a  
lawyer.*

*You are not being sued.*

Davita Pixel Settlement  
c/o Settlement Administrator  
P.O. Box XXXXX  
New York, NY XXXXXX

«ScanString»

Postal Service: Please do not mark barcode.

Notice ID: «Notice ID»

Confirmation Code: «Confirmation Code»

«FirstName» «LastName»

«Address1»

«Address2»

«City», «StateCd» «Zip»

«CountryCd»

NOTICE ID: «NOTICE ID»

«FIRST NAME» «LAST NAME»

«STREET»

«CITY» «STATE» «ZIP CODE»

DAVITA PIXEL SETTLEMENT CLAIM FORM

«Barcode»

Check one or both of these boxes if you would like to receive one-year of **Privacy Shield** and/or a **Cash Compensation** payment.

☐ I would like to receive Privacy Shield ☐ I would like a Cash Compensation payment

You may select one or both benefit offered. The Settlement must become final before Cash Compensation payments are issued or the Privacy Shield service can be activated.

I. EMAIL ADDRESS FOR PRIVACY SHIELD

Please provide an email address to receive your Privacy Shield protection activation code.

Email Address: \_\_\_\_\_

II. PAYMENT OPTIONS (SELECT ONE)

☐ PayPal ☐ Venmo ☐ Zelle ☐ Virtual Prepaid Card ☐ Check

Please provide the email address and/or phone number associated with your PayPal, Venmo or Zelle account. If you select a Virtual Prepaid Card, also please include an email address: \_\_\_\_\_

III. AFFIRMATION & SIGNATURE

By signing below and submitting this Claim Form, I affirm under penalty of perjury under the laws of the United States that I am, or was, a patient of DaVita treated at one of DaVita's U.S. clinics and I visited a website, patient portal, and/or mobile application owned, operated, or managed directly or indirectly by DaVita or its subsidiaries or affiliates at least once between November 20, 2017 and up to and including September 21, 2023. I further affirm that the information provided in this Claim Form is true and correct to the best of my knowledge.

Signature: \_\_\_\_\_ Printed Name: \_\_\_\_\_ Date: \_\_\_\_\_

**QUESTIONS? VISIT WEBSITE OR CONTACT THE SETTLEMENT ADMINISTRATOR**

**DaVita Pixel Settlement, P.O. Box XXXXXX, New York, NY XXXX ● Email Address ● 1-XXX-XXX-XXXX**

A proposed class action Settlement has been reached with DaVita Inc. ("DaVita" or "Defendant") arising out of DaVita's alleged implementation and use of third-party web tracking and analytics tools on DaVita's websites, patient portals, and mobile applications owned, operated, or managed by DaVita or its subsidiaries or affiliates. Plaintiffs allege that DaVita's use of these tools disclosed their web usage data, containing personally identifiable information and protected health information, to Facebook, Google, and other third-parties. DaVita denies these allegations, and the Court has not determined that DaVita did anything wrong. The case is known as *Kenneth Koslosky, Victoria Witherby, and Sandra Hoover v. DaVita, Inc.*, Case No. \_\_\_\_\_, in the Seventeenth Judicial District in and for Broward County, Florida.

**Who is Included?** All U.S. persons who are, or have been, patients of Defendant who were treated at Defendant's U.S. clinics and who visited any websites, patient portals, and/or mobile applications owned, operated, or managed directly or indirectly by Defendant or its subsidiaries or affiliates at least once between November 20, 2017 and up to and including September 21, 2023. You are receiving this notice because you have been identified as a Settlement Class Member according to DaVita's records.

**The Settlement Benefits:** DaVita has agreed to pay \$3,800,000 into a Settlement Fund to pay for: (i) reasonable Notice and Claims Administration Costs incurred; (ii) any taxes owed by the Settlement Fund; (iii) any Service Awards approved by the Court; (iv) any Attorneys' Fees, Costs, and Expenses Award as approved by the Court; and (v) the following benefits to Settlement Class Members who submit a valid Claim Form: (1) Privacy Shield, a data protection and monitoring service; and (2) a pro rata share of the Settlement Fund.

**How To Get Benefits:** You must complete and file a Claim Form online or by mail postmarked by **DATE**. You may also visit **WEBSITE** to submit your claim online or download a Claim Form to complete and return it by mail. You may also complete and return the Claim Form attached to this notice. After the Settlement becomes final, Settlement Class Members who submit a valid Claim Form for Privacy Shield will be sent a separate email with instructions on how to enroll for Privacy Shield.

**Your Other Options:** If you do not want to be legally bound by the Settlement and do not want to receive any of the Settlement benefits, you must **exclude yourself by DATE**. If you do not exclude yourself, you will release any claims you may have against DaVita and the Related Entities, as more fully described in the Settlement Agreement, available at **WEBSITE**. If you do not exclude yourself, you may **object** to the Settlement by **DATE**. Visit **WEBSITE** for complete information on how to exclude yourself from or object to the Settlement.

**Do I have a Lawyer?** Yes, the Court has appointed the law firm of Milberg Coleman Bryson Phillips Grossman As Class Counsel to represent you and the Settlement Class. Class Counsel will request an award of Attorneys' Fees, Costs, and Expenses not to exceed 35% of the Settlement Fund and retail value of Privacy Shield, plus reasonable costs and expenses, and a Service Award of \$2,500 for each Class Representative.

**The Final Approval Hearing:** The Court has scheduled a hearing for **DATE/TIME** in Courtroom **X** located at **COURT ADDRESS**. to consider whether to approve the Settlement, Service Awards, Attorneys' Fees, Costs and Expenses, as well as any objections. You or your attorney may

request to appear at the hearing, but you are not required to do so. The date or time of the hearing may change, so please check **WEBSITE** for updates.

Business  
Reply Mail

DaVita Pixel Settlement  
c/o Settlement Administrator  
P.O. Box XXXXXX  
New York, NY XXXXX



# **EXHIBIT D**

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

**KENNETH KOSKOSKY, VICTORIA  
WITHERBY, and SANDRA HOOVER**, on  
behalf of themselves and all others similarly  
situated,

Plaintiffs,

v.

**DAVITA INC.**

Defendant.

Civil Action No.

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

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

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

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

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

#### **I. CLASS CERTIFICATION FOR SETTLEMENT PURPOSES ONLY**

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

All U.S. persons who are, or have been, patients of Defendant who were treated at Defendant's U.S. clinics and who visited any websites, patient portals, and/or mobile applications owned, operated, or managed directly or indirectly by Defendant or its subsidiaries or affiliates at least once between November 20, 2017 and up to and including September 21, 2023.

Excluded from the Class are: (i) Defendant, any entity in which Defendant has a controlling interest, and Defendant's affiliates, parents, subsidiaries, officers, directors, legal representatives, successors, and assigns; (ii) any judge, justice, or judicial officer presiding over the Litigation and the members of their immediate families and judicial staff; and (iii) any individual who timely and validly excludes themselves from the Settlement.

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

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

## **II. SETTLEMENT CLASS REPRESENTATIVES AND SETTLEMENT CLASS COUNSEL**

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

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

## **III. PRELIMINARY SETTLEMENT APPROVAL**

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

#### **IV. JURISDICTION**

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

#### **V. FINAL APPROVAL HEARING**

A Final Approval Hearing shall be held on \_\_\_\_\_, 2024 at \_\_\_\_:\_\_\_\_ a.m./p.m. in Courtroom \_\_\_\_ of the Circuit Court for the Seventeenth Judicial Circuit in and for Broward County, Florida, located at 3550 Hollywood Blvd., Hollywood, FL 33201 to determine, among other things, whether: (i) this matter should be finally certified as a class action for settlement purposes pursuant to Florida Rule of Civil Procedure 1.220(d)(1), (2) and (3); (ii) the Settlement should be finally approved as fair, reasonable, and adequate pursuant to Florida Rule of Civil Procedure 1.220(e); (iii) the action should be dismissed with prejudice pursuant to the terms of the Settlement Agreement; (iv) Settlement Class Members should be bound by the releases set forth in the Settlement Agreement; (v) the application of Settlement Class Counsel for an award of attorneys' fees, costs and expenses (the "Fee Request") should be approved; and (vi) the application of the Settlement Class Representatives for a Service Award (the "Service Award Request") should be approved.

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

#### **VI. ADMINISTRATION**

The Court appoints \_\_\_ as the Settlement Administrator, with responsibility for class notice and claims administration. The Settlement Fund shall be used to all costs and expenses associated with providing notice to Settlement Class Members, including but not limited to, the Settlement Administrator's fees and costs.

## **VII. NOTICE TO THE CLASS**

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

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

## **VIII. FINDINGS CONCERNING NOTICE**

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

Florida Rules of Civil Procedure 1.220(d)(2) and (3), and the Due Process Clause(s) of the Florida Constitution.

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

#### **IX. EXCLUSION FROM CLASS**

Any Settlement Class Member who wishes to be excluded from the Settlement Class shall individually sign and timely submit written notice of such intent (a “Request for Exclusion”) to the designated Post Office box established by the Settlement Administrator. The written notice must (i) identify the case name and number of this lawsuit (*Kenneth Koskosky, Victoria Witherby, and Sandra Hoover v. DaVita Inc.*, Case No. \_\_\_); (ii) state the Settlement Class Member’s full name, address, and telephone number; (iii) contain the Settlement Class Member’s personal and original signature; (iv) state unequivocally the Settlement Class Member’s intent to be excluded from the Settlement Class, and; (v) request exclusion only for that one Settlement Class Member whose personal and original signature appears on the request. To be effective, written notice must be postmarked no later than sixty (60) Days after the Notice Date (the “Opt-Out Date”).

The Settlement Administrator shall provide the Parties with copies of all completed opt-out notifications, and a final list of all who have timely and validly excluded themselves from the Settlement Class. Any Settlement Class Member who does not timely and validly exclude herself or himself from the Settlement shall be bound by the terms of the Settlement. If a Final Approval Order and Final Judgment is entered, any Settlement Class Member who has not submitted a timely, valid written notice of exclusion from the Settlement Class shall be bound by all proceedings, orders, and judgments in this matter, including but not limited to the Release and the dismissal with prejudice set forth in the Final Judgment, including Settlement Class Members who

have previously initiated or who subsequently initiate any litigation against any or all of the Released Parties relating to the claims and transactions released in the Settlement Agreement. All Class Members who submit valid and timely notices of exclusion from the Settlement Class shall not be entitled to receive any benefits of the Settlement.

## **X. OBJECTIONS AND APPEARANCES**

A Settlement Class Member who does not exclude himself or herself and who complies with the requirements of the following paragraphs may object to the Settlement, the Service Award Request, or the Fee Request, and must do so no later than 60 days after the Notice Date.

Each Objection must (i) include the case name and number of the lawsuit (*Kenneth Koskosky, Victoria Witherby, and Sandra Hoover v. DaVita Inc.*, Case No. \_\_\_\_\_), (ii) set forth the Settlement Class Member's full name, current address, telephone number, and email address; (iii) contain the Settlement Class Member's personal and original signature; (iv) contain proof that the Settlement Class Member is a member of the Settlement Class, including an attestation under the laws of the United States that the objector is, or has been, a patient of Defendant and visited any websites, patient portals, and/or mobile applications owned, operated, or managed directly or indirectly by Defendant or its subsidiaries or affiliates at least once between November 20, 2017 and September 21, 2023; (v) state that the Settlement Class Member objects to the Settlement, in whole or in part; (vi) set forth a statement of the legal and factual basis for the Objection; (vii) provide copies of any documents that the Settlement Class Member wishes to submit in support of his/her position; (viii) identify any attorney representing the Settlement Class Member with respect to, or who provided assistance to the Settlement Class Member in drafting, his or her Objection, if any; (ix) contain the signature, name, address, telephone number, and email address of the Settlement Class Member's attorney, if any; (x) contain a list, including case name,



court, and docket number, of all other cases in which the objector and/or the objector's counsel has filed an objection to any proposed class action settlement In the past three (3) years; (xi) state whether the objection applies only to the Settlement Class Member, to a specific subset of the Settlement Class, or to the entire Settlement Class, and (xii) state whether the objecting Settlement Class Member intends to appear at the Final Approval Hearing, and if so, whether personally or through an attorney.

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

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

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

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

Agreement, including any final judgment and orders entered thereon, the Service Award Request, or the Fee Request.

#### **XI. CLAIMS PROCESS AND DISTRIBUTION AND ALLOCATION PLAN**

The Settlement Agreement provides for a process for distributing settlement benefits to Settlement Class Members who submit a timely, valid claim form. The Court preliminarily approves the settlement benefits to the class and plan for distribution of same as described in the Settlement Agreement, and directs that the Settlement Administrator effectuate the distribution of settlement consideration according to the terms of the Settlement Agreement, should Settlement be finally approved.

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

#### **XII. TERMINATION OF THE SETTLEMENT**

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

#### **XIII. USE OF ORDER**

This Order shall be of no continuing force or effect if Final Judgment is not entered or there is no Effective Date (as defined in the Settlement Agreement). In no event shall this Order be construed, regarded, or used as an admission, concession, or declaration by or against Defendant of any fault, wrongdoing, breach, or liability, or the certifiability of any class. Nor shall this Order be construed or used as an admission, concession, or declaration by or against the Settlement Class Representatives or any other Settlement Class member that his or her claims lack merit or that the relief requested is inappropriate, improper, unavailable, or as a waiver by any Party of any defense or claims he, she, or it may have in this litigation or in any other lawsuit.

#### **XIV. STAY OF PROCEEDINGS**

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

#### **XV. CONTINUANCE OF HEARING**

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

#### **XVI. SUMMARY OF DEADLINES**

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

- 1. Notice Deadline: 60 days after entry of this Order**
- 2. Motion for Final Approval: 14 days prior to Final Approval Hearing**

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

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

IT IS SO ORDERED this the \_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
JUDGE, CIRCUIT COURT