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**IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA**

CASE NO. CACE24003886 DIVISION: 12 JUDGE: Frink, Keathan B. (12)

James Wade, et al

Plaintiff(s) / Petitioner(s)

v.

The Daily Wire, LLC

Defendant(s) / Respondent(s)

**ORDER ON PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Plaintiffs, James Wade and Michael Chavarria ("Plaintiffs") filed an Unopposed Motion for Preliminary Approval of Class Action Settlement and Supporting Memorandum of Law ("Motion for Preliminary Approval"). Because the Settlement Agreement developed before the Settlement Class was certified, Plaintiffs also request a preliminary certification of the Settlement Class for settlement purposes and approval of the Notice and Approved Claims process. Finally, Plaintiffs request a Final Approval Hearing to consider the Settlement Agreement after Settlement Class Members have received Notice and had an opportunity to opt-out of or object to the Settlement Agreement.

The Court is familiar with and has reviewed the record, the Settlement Agreement and its exhibits, Plaintiffs' Unopposed Motion for Preliminary Approval, and the supporting Declaration of Class Counsel. After consideration, the Court **GRANTS** the motion and **ORDERS** as follows:

I. BACKGROUND

This putative class action was filed on March 21, 2024, in the Circuit Court of Broward County, Florida, 17th Judicial Circuit. The material allegations of the complaint center on The Daily Wire, LLC's ("Defendant") alleged disclosure of its subscribers' personally identifiable information to

Facebook without permission in violation of the Video Privacy Protection Act, 18 U.S.C. § 2710 et seq. (the “VPPA”).

Prior to filing this action, the parties engaged in settlement discussions, and, to that end, agreed to participate in private mediation before Plaintiffs formally filed the complaint. The mediation took place on January 16, 2024, and lasted the entire day. The parties engaged in good faith negotiations, which at all times were at arm’s length, and reached agreement on all material terms of a class action settlement and executed a term sheet. The Parties entered into an Agreement in September 2024 which is attached as Exhibit 1 to Plaintiffs’ Unopposed Motion for Preliminary Approval and sets forth the terms and conditions of the Settlement Agreement.

Plaintiffs have moved the Court for a Preliminary Approval Order approving the Settlement Agreement pursuant to Fla.R.Civ.P. 1.220 and approving the Notice and Approved Claims process. Defendant does not contest certification for the Settlement Class for purposes of this Settlement Agreement.

II. LEGAL STANDARD

In preliminarily approving a settlement, Courts must preliminarily certify the Settlement Class and determine whether the proposed settlement is “within the range of possible approval.” *Manual for Complex Litig.*, Sec. 30.41 (3rd ed. 1995). Although under Rule 1.220 there are no specific standards for such approval, Federal Rule of Civil Procedure Rule 23(e) provides “the Court will approve a class action settlement if it is ‘fair, reasonable, and adequate.’” *Burrows v. Purchasing Power, LLC*, 2013 WL 10167232, at *5 (quoting Fed. R. Civ. P. 23(e)(2)); *Griffith v. Quality Distribution, Inc.*, 307 So.3d 791 (Fla. 2d DCA 2018). While at the second, or final approval stage a Court should consider factors such as (1) the complexity and duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings; (4) the risk of establishing liability; (5) the risk of establishing damages; (6) the risk of maintaining a class action; (7) the ability of the defendant to withstand a greater judgment; (8) the reasonableness of the settlement in light of the best recovery; and (9) the range of reasonableness of the settlement in light of all the attendant risks of litigation, at the preliminary, pre-

notice approval stage, a Court determines only whether the proposed settlement is “within the range of possible approval.” *Id.* (quoting *Manual for Complex Litig.*, Sec. 30.41 (3rd ed. 1995)); *see also Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984); *Grosso v. Fidelity National Title Ins. Co.*, 983 So. 2d 1165 (Fla. 3d DCA 2008).

III. ANALYSIS

Plaintiffs’ Unopposed Motion for Preliminary Approval requests that this Court certify the Settlement Class for purposes of Settlement and Preliminary Approval of the Settlement Agreement. In addition, this Court addresses Class Representatives appointment, Class Counsel appointment, Notice to Settlement Class Members and their opportunity to opt-out or object, the Approved Claims process, timing for the filing of the Motion for Final Approval, including Class Counsel’s Application for Attorneys’ Fees and Costs, and the scheduling of a Final Approval Hearing.

A. PRELIMINARY APPROVAL OF THE SETTLEMENT

The Court has carefully reviewed the Settlement Agreement. Preliminary Approval of the Settlement is granted because the Court will likely be able to approve the Settlement Agreement under the factors set forth in Rule 23(e)(2) and *Griffith* and certify the Settlement Class for purposes of judgment at the Final Approval stage. *See* Fed. R. Civ. P. 23(e); *Griffith v. Quality Distribution, Inc.*, 307 So.3d 791 at 986 (Fla. 2d DCA 2018). The Court also finds the Settlement Agreement resulted from extensive arm’s length negotiations, with a mediator’s assistance, and is sufficient to warrant Notice of the Settlement Agreement to the Settlement Class and a Final Approval Hearing.

B. CLASS CERTIFICATION FOR SETTLEMENT PURPOSE ONLY

The Supreme Court has recognized that the benefits of a proposed settlement of a class action can be realized only through the certification of a settlement class. *See Amchem Prods. Inc. v. Windsor*, 521 U.S. 591, 620 (1997). Prior to granting preliminary approval of a class action settlement, a court should determine that the proposed settlement class is a proper class for settlement purposes. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997). A class may be certified under Fla.R.Civ.P. 1.220(a):

- (1) the members of the class are so numerous that separate joinder of each member is impracticable [*numerosity*], (2) the claim or defense of the

representative party raises questions of law or fact common to the questions of law or fact raised by the claim or defense of each member of the class [commonality], (3) the claim or defense of the representative party is typical of the claim or defense of each member of the class [typicality], and (4) the representative party can fairly and adequately protect and represent the interests of each member of the class [adequacy].

Fla.R.Civ.P. 1.220(a). Additionally, where (as in this case), certification is also sought under Rule 1.220(b)(3), Plaintiffs must demonstrate that common questions of law or fact predominate over individual issues and that a class action is superior to other methods of adjudicating the claim. Fla. R. Civ. P. 1.220(b)(3). See *Amchem Prods. Inc. v. Windsor*, 521 U.S. 591, 620 (1997); *Sosa v. Safeway Premium Finance Co.*, 73 So.3d 91 (Fla. 2011).

(a) Fla.R.Civ.P. 1.220(a) Requirements

For settlement purposes only, the Court finds that the Settlement Class satisfies Fla.R.Civ.P. 1.220(a) requirements of numerosity, commonality, typicality, and adequacy. Numerosity is met where the class is “so numerous that joinder of all members is impractical.” Fed. R. Civ. P. 23(a)(1). A prospective class size of several hundred aggrieved members was found to satisfy the numerosity requirement of Fla.R.Civ.P. 1.220(a). See *Id.*; *Union Am. Ins. Co. v. Rodriguez*, 696 So.2d 1248, 1249 (Fla. 3d DCA 1997) (finding that numerosity satisfied by a class of over 20,000); *Maner Props., Inc. v. Siksay*, 489 So.2d 842, 844 (Fla. 4th DCA 1986) (Numerosity requirement was satisfied by a prospective class of over 350). During the relevant time period, there have been over 1 million subscribers of Defendant.

For settlement purposes only, the Court finds there are questions of law and fact common to the Settlement Class since Plaintiffs’ and Settlement Class Members’ claims all concern over Defendant’s disclosure of its subscribers’ personally identifiable information to Facebook without permission in violation of the Video Privacy Protection Act, 18 U.S.C. § 2710 *et seq.* (the “VPPA”). See *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011) (commonality satisfied where plaintiff’s claims “depend upon a common contention” that is “of such a nature that it is capable of class-wide resolution”).

For settlement purposes only, the Court finds that Plaintiffs’ claims are typical of the claims of

the Settlement Class Members. *See* Fla.R.Civ.P. 1.220(a). As Plaintiffs explain in their Unopposed Motion for Preliminary Approval, Plaintiffs and Settlement Class Members would likely have similar legal contentions, Defendant's disclosure of its subscribers' personally identifiable information to Facebook without permission in violation of the VPPA. Accordingly, there is a "sufficient nexus" between Plaintiffs' claims and those of individual Settlement Class Members to warrant class certification. *Sosa v. Safeway Premium Finance Co.*, 73 So.3d at 114.

Finally, for settlement purposes only, the Court finds Plaintiffs are capable of "fairly and adequately" protecting the interests of the Settlement Class, Fla.R.Civ.P. 1.220, as there are no apparent conflicts of interest between Plaintiffs and the Settlement Class Members. Plaintiffs have also retained competent counsel, highly experienced with class action litigation, who have and will adequately prosecute this action through Final Approval of the Settlement Agreement. *See City of Tampa v. Addison*, 979 So.2d 246, 255 (Fla. 2d DCA 2007).

(b)Fla.R.Civ.P. 1.220(b)(3) Requirements

For settlement purposes only, the Court finds the Settlement Class also satisfies the predominance and superiority requirements for a damages class action. *See* Fla.R.Civ.P. 1.220(b)(3). Given the similarity between Plaintiffs' and Settlement Class Members' claims and Defendant's common defenses, the Court finds that common questions of law and fact predominate over those questions that might only affect individual Settlement Class Members. Thus, the Settlement Class is sufficiently cohesive to warrant class certification for settlement purposes. *See* Fla.R.Civ.P. 1.220(b)(3). The Court also finds that certification of the Settlement Class for settlement purposes appears superior to other available methods to resolve the claims at issue. *Id*; *see, Disc. Sleep of Ocala, LLC v. City of Ocala*, 245 So. 3d 842, 850 (2018) (Predominance is established if a class representative establishes predominance by proving his or her own individual case, *necessarily* proves the cases of the other class members); *Desue v. 20/20 Eye Care Network, Inc.*, No. 21-cv-61275, 2022 WL 17477004, at *5 (S.D. Fla. Dec. 5, 2022) (finding class treatment superior for settlement purposes).

C. CLASS REPRESENTATIVES

Plaintiffs, James Wade and Michael Chavarria, are appointed as Class Representatives for settlement purposes only.

D. CLASS COUNSEL

Based on the considerations in Florida Rule of Civil Procedure 1.220(a) and the Declaration of Class Counsel appended to the Unopposed Motion for Preliminary Approval, the Court appoints Gary M. Klinger of Milberg, Coleman, Bryson, Phillips, Grossman PLLC and L. Timothy Fisher of Bursor & Fisher, P.A. as Class Counsel.

E. SETTLEMENT ADMINISTRATOR

Angeion is an experienced third-party class action settlement administrator. Therefore, Angeion is appointed as Settlement Administrator in accordance with the provisions of Section 1.29 of the Settlement Agreement.

F. NOTICE AND CLAIMS PROCESS

The Court approves the Notice substantially in the forms attached as Exhibits B and C to the Settlement Agreement, the Claim Form substantially in the form attached as Exhibit A to the Settlement Agreement, and the creation of the Settlement Website in accordance with the terms of the Settlement Agreement. The Notice is reasonably drafted, under the circumstances, to apprise the Settlement Class of the pendency of this Action; the effects of the Settlement Agreement on their rights (including the Released Claims contained therein); Class Counsel's upcoming Application for Attorneys' Fees and Costs; of their right to submit a Claim Form, including the Cash Payments; of their right to opt-out of the Settlement Agreement; and of their right to object to any aspect of the Settlement Agreement. The Final Approval Hearing date and time shall be included in the Notices and on the Settlement Website.

The Parties, without further approval from the Court, are permitted to revise the Claim Form and other forms of Notice (Exhibits A-C to the Settlement Agreement) in ways that are appropriate to update these documents for purposes of accuracy and formatting, so long as they are consistent in all material respects with the Settlement Agreement and this Preliminary Approval Order.

The Court also finds that the Notice constitutes "the best notice practicable under the

circumstances” and satisfies the requirements of Fla. R. Civ. P. Rule 1.220(d)(2), due process, and all other applicable law and rules. *See* Fla. R. Civ. P. Rule 1.220(d)(2); *see DeSouza*, 2023 WL 5434712, at *9 (“th[e] method of providing notice to the class members pursuant to Rule 23—mailing/emailing the notice in conjunction with establishing a website—has been deemed an appropriate method of notice by courts in this District.”); *see also Poertner v. Gillette Co.*, 618 F. App’x 624, 628 (11th Cir. 2015) (per curiam) (finding claim process that involved “completing a one-page form and submitting it either online or by mail” is not “particularly difficult or burdensome”).

The Court directs the Settlement Administrator to disseminate the Notice in accordance with the Notice provisions in the Settlement Agreement. In advance of the Final Approval Hearing, the Settlement Administrator shall prepare a declaration to submit to the Court confirming that the Notice was completed and describing how it was completed.

G. MOTION FOR FINAL APPROVAL AND APPLICATION FOR ATTORNEYS’ FEES AND COSTS

The Court directs Plaintiffs to file their Motion for Final Approval at least 14 days before the date originally set for the Final Approval Hearing. The Court directs Class Counsel to submit their Application for Attorneys’ Fees, Costs, and Expenses, and Service Award to Plaintiffs at least 14 days prior to the deadline for Settlement Class Members to Opt-Out of or Object to the Settlement Agreement.

H. OPT-OUTS AND OBJECTIONS

Settlement Class Members may opt-out of the Settlement Class or object to the Settlement Agreement under the procedures and schedule included in the Settlement Agreement. *See* Fla. R. Civ. P. Rule 1.220(d)(2). Except for those Settlement Class Members who timely and properly submit an opt-out request, all other Settlement Class Members will be deemed to be Settlement Class Members for all purposes under the Settlement Agreement, and upon the Effective Date, will be bound by its terms, regardless of whether they file a Claim Form or receive any Settlement Class Member Benefit.

Any Settlement Class Member who fails to timely file with the Court a written objection shall waive and forfeit any and all rights they may have to object, appear, present witness testimony, and/or

submit evidence; shall be barred from appearing, speaking, or introducing any testimony or evidence at the Final Approval Hearing; shall be precluded from seeking review 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 Action.

IV. FINAL APPROVAL HEARING

As required by Fla. R. Civ. P. Rule 1.220, the Court will hold a hearing to determine whether the Settlement Agreement is fair, reasonable, and adequate. The Final Approval Hearing is set for **June 30, 2025**, at 9:00 a.m.. via Zoom. The Court reserves the right to adjourn or continue the Final Approval Hearing, or any further adjournment or continuance thereof, without further notice other than announcement at the Final Approval Hearing or at any adjournment or continuance thereof, and to approve the Settlement Agreement with modifications, if any, consented to by Class Counsel and Defendant without further notice, though such extensions shall be posted on the Settlement Website.

V. PERTINENT DATES AND DEADLINES

As stated in this Preliminary Approval Order, and consistent with the Settlement Agreement, the following dates and deadlines shall apply to the approval of this Settlement:

Event	Date	Timeline
Notice Date		30 days after Preliminary Approval
Deadline for filing Motion for Class Counsel's Attorneys' Fees Costs, and Expenses, and for Service Award		14 days prior to the deadline for opting-out of the Settlement Agreement and for submission of Objections
Deadline for opting-out of the Settlement and for submission of Objections		30 days after the Notice Date
Last day Class Claimants may submit a Claim Form		52 days following the Notice Date or 7 days after the Final Approval Hearing, whichever occurs first.
Deadline to file Motion for Final Approval of Class Action		14 days prior to the Final Fairness Hearing

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Settlement		
Final Fairness Hearing		No less than 90 days from the data of Preliminary Approval

DONE AND ORDERED in Chambers at Broward County, Florida on 29th day of March, 2025.

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Hon. Keathan Frink

CIRCUIT COURT JUDGE

Electronically Signed by Keathan Frink

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