UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA

CONNIE HOWARD, YADIRA YAZMIN HERNANDEZ, and DEBORAH REYNOLDS, on behalf of themselves and all other persons similarly situated, Plaintiffs, v. LABORATORY CORPORATION OF AMERICA and LABORATORY CORPORATION OF AMERICA HOLDINGS, Defendants.	Case No. 1:23-cv-758-WO-JEP **MEMORANDUM IN SUPPORT OF UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

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INTRODUCTION

After nearly three years of vigorous litigation, the parties have reached a class-wide settlement to resolve this action (the "Action"), which alleges that Defendants Laboratory Corporation of America and Laboratory Corporation of America Holdings (together "Labcorp") violated California and Pennsylvania state wiretapping laws by facilitating, through third-party tracking technologies, the interception of Plaintiffs' personally identifiable information and searches they conducted on Labcorp's website. Pursuant to the proposed Class Action Settlement Agreement and Release (the "Settlement" or "Settlement Agreement"),[1] Labcorp agrees to implement significant business practice changes concerning the conduct at issue while avoiding the risks of further litigation. Specifically, Labcorp agrees that for at least two years, it will: (1) not use or enable on www.labcorp.com (the "Website") any Tracking Technologies or, with the exception of certain Exempt Technology, any other technology that to its knowledge transmits to third parties the contents of Search Queries entered into the Website; (2) conduct annual compliance reviews and provide reports to Settlement Class Counsel; (3) create and/or maintain a written policy regarding the appropriate use of externally developed tracking technologies on the Website (with a copy for Settlement Class Counsel); (4) designate a senior employee to oversee compliance with these terms; and

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[1] A copy of the Settlement Agreement, including a proposed order granting preliminary approval of the Settlement (Exhibit A thereto), is being filed concurrently herewith. *See* Joint Declaration of Plaintiffs' Counsel ("Joint Decl."), Ex. 1. Capitalized terms not otherwise defined herein shall have the same meaning ascribed to them as in the Settlement Agreement.

(5) allow Plaintiffs to seek an injunction, if needed, to enforce these terms. Importantly, these business practice changes benefit millions of Labcorp Website users across the United States, and not only those in the Settlement Class, which is limited to California and Pennsylvania.

The Settlement is fair, reasonable, and adequate. In exchange for a release of only the injunctive relief claims of Settlement Class Members (and both injunctive and monetary relief claims for Settlement Class Representatives), the Settlement achieves Plaintiffs' principal objective of preventing the use of certain third-party Tracking Technologies on Labcorp's Website while preserving the rights of Settlement Class Members (other than the Settlement Class Representatives) to pursue claims for damages or other monetary relief. The Settlement is well-informed by a comprehensive pre-filing investigation as well as a detailed forensic analysis, extensive document discovery, and expert review and analysis of data produced by Labcorp and third parties. And it results from lengthy arm's-length negotiations aided by experienced mediator, Hunter Hughes. While notice is not required under Rule 23(b)(2), the parties nevertheless propose an online notice campaign, which directs Settlement Class Members to a settlement website containing important information about the Settlement and Settlement approval process. For the reasons set forth herein, the Settlement should be preliminarily approved.[2]

[2] The parties consent to the entry of a Preliminary Approval Order without oral argument for resolution on the papers, but are available for oral argument if requested by the Court.

BACKGROUND

A. Relevant Allegations

According to Plaintiffs' operative complaint, millions of individuals in California and Pennsylvania visit Labcorp's Website to search for and obtain medical and health-related information. *See* ECF No. 67 (Am. Compl.) ¶¶ 14, 54–55. Plaintiffs allege Labcorp installed and configured hidden tracking code on its website (labcorp.com) to surreptitiously track the activities of people using the website to search for sensitive medical information. *Id.* ¶ 2. Created by third parties like Meta, Google, and The Trade Desk, these so-called "Third-party Trackers" allegedly facilitated the disclosure of large quantities of sensitive information regarding visitors and their activities while on the Labcorp Website. *Id.* ¶¶ 21–75. Among other things, Plaintiffs allege that the Third-party Trackers transmitted information identifying the visitor, the specific pages visited, and the search terms they entered into the Website's search bar. *Id.* ¶¶ 3, 28–30, 45, 49–50, 56, 59–75.

Plaintiffs visited the Labcorp Website between May 2021 and February 2023 to allegedly conduct searches regarding a variety of sensitive medical issues, while in California or Pennsylvania, their respective states of residence. *Id.* ¶¶ 83–84, 89–90, 95–96. Plaintiffs allege they never consented to the interception of their private information or Labcorp's facilitation of the same. *Id.* ¶¶ 88, 94, 100. Labcorp contests all these allegations.

B. Commencement of the Action, Transfer of Venue, and Motion to Dismiss the Amended Complaint

Plaintiffs Connie Howard, Yadira Yazmin Hernandez, and Deborah Reynolds commenced this Action in the Northern District of California on June 5, 2023. ECF No. 1; Joint Decl. ¶ 7. On August 23, 2023, Labcorp filed a motion to dismiss the complaint, arguing that the California federal court lacked personal jurisdiction over Labcorp. ECF No. 53; Joint Decl. ¶ 8. Plaintiffs opposed the motion but agreed to transfer the Action to this District to conserve judicial resources and in the best interests of putative class members. ECF No. 54; Joint Decl. ¶¶ 9–10. Following an order granting the requested transfer to this District (ECF No. 55), Plaintiffs filed an Amended Complaint on September 13, 2023, alleging violations of (i) the California Invasion of Privacy Act ("CIPA"), and (ii) the Pennsylvania Wiretapping Electronic Surveillance and Control Act ("WESCA"). ECF No. 67; Joint Decl. ¶ 11.

On October 11, 2023, Labcorp filed a motion to dismiss the Amended Complaint. ECF Nos. 78–79; Joint Decl. ¶ 12. The motion was fully briefed. *See* ECF Nos. 85, 91; Joint Decl. ¶ 12. On August 8, 2024, Magistrate Judge Peake issued an Order and Recommendation (the "O&R") denying Labcorp's motion to dismiss. *See* ECF No. 106; Joint Decl. ¶ 13. On August 22, 2024, Labcorp objected to the O&R, which Plaintiff opposed. ECF Nos. 108 & 110; Joint Decl. ¶ 14. On September 27, 2024, this Court adopted the O&R and denied Labcorp's motion to dismiss. ECF No. 114. In its order, the Court expressed "substantial concern with Plaintiffs' class allegations," warning that while Plaintiffs sufficiently alleged they were harmed, the Court reserved its judgment as to whether the requirements for class certification could be met. *See id.* at 6; Joint Decl. ¶ 15.

C. **Plaintiffs' Discovery Efforts**

For nearly a year following the Court's order denying Labcorp's motion to dismiss, the parties engaged in extensive discovery efforts. Joint Decl. ¶ 16. At the outset, the parties negotiated a Protective Order and ESI Protocol, both of which were entered by Magistrate Judge Peake. *See* ECF Nos. 117, 120, 121, 126; Joint Decl. ¶ 17.

Discovery commenced on October 3, 2024 (*see* ECF No. 115 at 1), at which point Plaintiffs' first sets of discovery requests (previously served on January 10, 2024), consisting of 25 requests for production and 11 interrogatories, were deemed served. Joint Decl. ¶ 18. Plaintiffs served an additional set of requests for production on May 22, 2025. *Id.* Together, these requests sought information pertaining to, among other things, the alleged installation and configuration of Third-party Trackers on Labcorp's Website, the nature and scope of data collected from Website visitors, and the purposes for which such data was collected. *Id.* In response to Plaintiffs' requests, Labcorp produced 20,293 documents, including (i) the "Git repository" for Labcorp's Website and JavaScript Object Notation ("JSON") files for Google Tag Manager, which reflected in part the installation and configuration of Third-party Trackers by Labcorp; (ii) nearly 3,000 emails and internal documents; (iii) public-facing information from the Labcorp Website; (iv) relevant agreements with third-parties; (v) account-level setting and analytics information relating to Labcorp's use of the Meta Pixel and Google Analytics; and (vi) a limited subset of data purportedly collected by Google Analytics. *Id.* ¶ 19. By the time the parties reached an agreement in principle to resolve this litigation, Plaintiffs' counsel had reviewed nearly all of the documents and data Labcorp produced, worked extensively with technical consulting experts to evaluate those documents and data (including to identify perceived gaps in the same), and issued Rule 30(b)(1) and Rule 30(b)(6) deposition notices and prepared to take depositions of several key witnesses. *Id.* ¶ 20.

Labcorp also sought extensive discovery. On October 25, 2024, Labcorp served its first sets of discovery requests, consisting of 34 requests for production and 15 interrogatories, on each named Plaintiff. *Id.* ¶ 21. In response, Plaintiffs collected, searched, and produced documents from a variety of electronic sources, including (i) the forensic images of seven of Plaintiffs' devices, (ii) eight email accounts, (iii) data exported via Google Takeout for four accounts, and (iv) data exported via Facebook for three accounts. *Id.* ¶ 22. In total, Plaintiffs reviewed over 6,000 custodial documents and produced 186 documents (spanning 1,142 pages) from these sources, though they anticipated producing additional documents and data had the parties not reached an agreement to settle the case. *Id.*

Labcorp also sought access to Plaintiffs' devices for forensic inspection. *Id.* ¶ 23. Plaintiffs objected but agreed to perform searches for specific relevant material across the images they collected at the outset of the litigation. *Id.* After an initial exchange of information, Labcorp demanded, and Plaintiffs agreed, that forensic images of Plaintiffs devices be collected a second time (where feasible) using a full file system extraction methodology that had since become commercially available. *Id.* ¶ 24. The second imaging effort proved technically challenging and time-consuming and, after a lengthy effort to collect those images, Plaintiffs' counsel worked with its vendor and Labcorp to search for and identify responsive data in those device images for production. *Id.*

Over the course of discovery, counsel for Plaintiffs and Labcorp repeatedly discussed the scope of the parties' requests, the search terms for identifying potentially responsive information, and the specific types of data on Plaintiffs' devices that were relevant to the claims in the case—including through at least ten meet and confers by videoconference, multiple discussions by telephone, and voluminous email and letter correspondence. *Id.* ¶ 29. Those discussions were complex and highly contested. *Id.* And while the parties endeavored in good faith to avoid discovery disputes, prior to mediation, Plaintiffs had identified several areas of disagreement that would likely require resolution by the Court, including whether (1) Labcorp must produce information pertaining to all Third-party Trackers installed on the Labcorp Website (rather than only the Meta Pixel and Google Analytics), and (2) Labcorp's interrogatory responses and document production were sufficient to show the circumstances surrounding the installation and configuration of each Third-party Tracker. *Id.* ¶ 30.[3]

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[3] As the parties prepared to engage in mediation, Plaintiff Hernandez moved to voluntarily dismiss her claims based on the burden of ongoing discovery obligations, (Dkt. 133), which Labcorp opposed (Dkt. 138). Joint Decl. ¶¶ 31-32. The Settlement obviated those issues.

Plaintiffs also sought discovery from 13 third parties through document and deposition subpoenas, including (a) entities that developed Third-party Trackers installed on the Labcorp Website; and (b) vendors Labcorp contracted with to manage and develop its Website. *Id.* ¶ 26. Over the course of nearly eight months, counsel for Plaintiffs and those third parties engaged in dozens of meet and confers regarding the scope of each subpoena, culminating in substantial disclosures regarding the installation and configuration of Third-party Trackers on the Website. *Id.* ¶ 27. In total, third parties produced 4,492 documents in response to Plaintiffs' subpoenas. *Id.* ¶ 28.

D. Mediation and Settlement

The parties and their respective counsel engaged in arm's-length mediation sessions on September 5, 2025 (in-person) and September 26, 2025 (by Zoom), with a highly experienced mediator, Hunter Hughes of Hunter ADR. *Id.* ¶ 33. In advance, the parties drafted and exchanged mediation statements and supplemental letters to the same. Though the parties were unable to reach a settlement in principle during these sessions, they continued to engage in discussions directly. *Id.* ¶ 34. On January 14, 2026, following months of extensive negotiations, including with regard to the proposed business practice changes, the parties reached an agreement in principle. *Id.* ¶ 35. On April 2, 2026, the parties finalized and executed the Settlement Agreement. *Id.* ¶ 36.

SUMMARY OF THE SETTLEMENT AGREEMENT

Settlement Class. The Settlement defines the following state-specific classes (together, the "Settlement Class"):

> California Settlement Class: All persons in California who conducted Search Queries on Labcorp's Website from May 1, 2021 to the date of the Settlement Agreement [April 2, 2026].
>
> Pennsylvania Settlement Class: All persons in Pennsylvania who conducted Search Queries on Labcorp's Website from May 1, 2021 to the date of the Settlement Agreement [April 2, 2026].

Excluded from the Settlement Class are "Labcorp, its current employees, officers, directors, legal representatives, heirs, successors and wholly or partly owned subsidiaries or affiliated companies; the undersigned counsel for Plaintiffs and their employees; and the judge and court staff to whom this Action is assigned." Settlement § 1.15.

Injunctive Relief. Pursuant to the Settlement, Labcorp agrees to implement several business practice changes. As an initial matter, Labcorp warrants that after completing a review of its Website, none of the Tracking Technologies—defined as the Meta Pixel, Google Analytics, The Trade Desk Universal Pixel, LinkedIn Insight Tag, and the Twitter (now "X") Pixel—are active and/or enabled as of April 2, 2026. Settlement §§ 1.19, 3.2.[4] In addition, Labcorp agrees to implement the following injunctive relief for a period of not less than two years following the Effective Date:

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[4] The Settlement definition of "Tracking Technologies" differs from the "Third-party Trackers" described in Plaintiffs' Amended Complaint. *Compare* Settlement § 1.19, *with* ECF No. 67 (Am. Compl.) ¶¶ 21–75. Of relevance here, certain technologies on Labcorp's Website were employed for limited purposes and subject to confidentiality and/or non-disclosure terms. Accordingly, under the Settlement, while Labcorp is prohibited from using the Tracking Technologies, it is permitted to use an "Exempt Technology," which means and refers to:

> technology on the Website that, to Labcorp's knowledge: (i) is used solely to support the operation or functionality of the Website and/or any aspects of Labcorp's business directly related to or facilitated by the operation or

- Labcorp shall not use or enable any of the Tracking Technologies on the Website (*id.* § 4.1);
- Except for Exempt Technology, Labcorp shall not use technology on the Website that to Labcorp's knowledge transmits the contents of Search Queries entered into the Website to third parties (*id.* § 4.2);
- Labcorp shall conduct an annual review of the Website to assess compliance with the provisions above and prepare an annual report of findings to be shared with Settlement Class Counsel (*id.* § 4.3);
- Labcorp shall create and/or maintain a written policy regarding the appropriate use of externally developed tracking technologies on the Website and provide a copy of that policy to Settlement Class Counsel (*id.* § 4.4); and
- Labcorp shall designate a senior employee to oversee compliance with the provisions above (*id.* § 4.5).

Released Claims. In exchange for the injunctive relief provided by the Settlement, Settlement Class Members will release Labcorp and the Released Parties from all

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> functionality of the technology, and (ii) the use of which is governed by a confidentiality and/or non-disclosure terms with the applicable technology provider such that the contents of Search Queries entered into the Website are to remain confidential, not be used by the technology provider for any online display advertising-related purpose, be treated as belonging to Labcorp, and only be used by or transmitted by the applicable technology provider to any other third party for the sole purpose of supporting the operation or functionality of the Website and/or any directly-related business purpose.

Settlement § 1.20.

Released Claims, including but not limited to claims under CIPA and WESCA. *Id.* § 1.9. Importantly, the Released Claims *do not include claims for damages or other monetary relief*, except with respect to the Settlement Class Representatives. *Id.*

ARGUMENT

Rule 23(e) of the Federal Rules of Civil Procedure requires a preliminary evaluation of a proposed class action settlement, the first step in a three-step process. At the initial step, a court must initially determine whether it "will likely be able to" (i) approve the settlement as fair, reasonable, and adequate, and (ii) certify the class for purposes of judgment on the proposed settlement. Fed. R. Civ. P. 23(e)(1)(B). Then, after potential settlement class members are given notice (if applicable) and an opportunity to object, the court must hold a final hearing to consider whether to approve the settlement. *See* Fed. R. Civ. P. 23(e)(2), (5). Plaintiffs respectfully ask the Court to take the first step and preliminarily approve the Settlement and direct notice to the Settlement Class.

I. The Settlement Is Fair, Reasonable, and Adequate.

In determining whether a proposed settlement is fair, reasonable, and adequate, Rule 23(e)(2) directs courts to consider whether

> (A) the class representatives and class counsel have adequately represented the class;
> (B) the proposal was negotiated at arm's length;
> (C) the relief provided for the class is adequate, taking into account:
> (i) the costs, risks, and delay of trial and appeal;
> (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;

(iii) the terms of any proposed award of attorney's fees, including timing of payment; and
(iv) any agreement required to be identified under Rule 23(e)(3); and
(D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2).[5] Consideration of these factors supports granting preliminary approval of the Settlement and directing notice to the Settlement Class.

A. Plaintiffs and Their Counsel Have Vigorously Represented the Settlement Class (Rule 23(e)(2)(A)).

For nearly three years, Plaintiffs and their counsel have diligently and zealously represented the interests of the Settlement Class. Fed. R. Civ. P. 23(e)(2)(A). As detailed above and in the accompanying Joint Declaration, those efforts included: (i) a diligent and thorough pre-filing investigation into the Third-party Trackers installed on Labcorp's Website (Joint Decl. ¶¶ 6, 38); (ii) legal research and drafting of two complaints alleging violation of state wiretapping laws (*id.* ¶¶ 7, 11, 38; ECF Nos. 1, 67); (iii) briefing in opposition to Labcorp's motion to dismiss and subsequent objections to Magistrate Judge Peake's O&R (Joint Decl. ¶¶ 13-14, 38; ECF Nos. 85, 110); (iv) propoundment of discovery requests on Labcorp and 13 third parties and participation in exhaustive meet and confer negotiations regarding the appropriate scope of responses to those requests (Joint Decl. ¶¶ 26-27, 38); (v) preparation of responses to

[5] These factors "almost completely overlap" with, and can be analyzed in tandem with, the factors that the Fourth Circuit has traditionally considered under Rule 23(e)(2). *In re Lumber Liquidators Chinese-Manufactured Flooring Prods. Mktg., Sales Pracs. & Prods. Liab. Litig.*, 952 F.3d 471, 484 n.8 (4th Cir. 2020); *see also In re Jiffy Lube Sec. Litig.*, 927 F.2d 155, 158–59 (4th Cir. 1991) (enumerating relevant factors); Fed. R. Civ. P. 23(e)(2), 2018 adv. Comm. note (directing parties "to present the settlement to the court in terms of a shorter list of core concerns" enumerated in Rule 23(e)(2)).

Labcorp's discovery requests, including the collection, review, and production of Plaintiffs' custodial documents, as well as the painstaking analysis of data from forensic images of Plaintiffs' devices (*id.* ¶ 38); (vi) preparation of anticipated motions to compel (*id.*); (vii) review and analysis of documents produced by Labcorp and third parties, including in consultation with experts (*id.*); (viii) issuance of Rule 30(b)(1) and Rule 30(b)(6) deposition notices as well as Rule 45 deposition subpoenas and preparation to take these depositions (*id.*); and (ix) participation in two mediations and subsequent hard-fought settlement negotiations (*id.*). Taken together, these efforts ensured that the Settlement resulted from well-informed and vigorous advocacy on behalf of the Settlement Class.

B. The Settlement Was Negotiated at Arm's Length (Rule 23(e)(2)(B)).

The Settlement "was negotiated at arm's length" and is the product of extensive negotiations, spanning several months and facilitated through an experienced and highly regarded mediator, Hunter Hughes. Fed. R. Civ. P. 23(e)(2)(B); *see also* Declaration of Hunter Hughes ¶¶ 4–6. The involvement of Mr. Hughes in particular supports a finding that the Settlement is not a product of collusion. *See, e.g.*, *Lewis v. Precision Concepts Grp. LLC*, No. 1:18CV64, 2021 U.S. Dist. LEXIS 254416, at **6–7 (M.D.N.C. March 23, 2021) (finding absence of collusion after settlement was reached with the assistance of "experienced mediator" Hunter Hughes); *see also Jones v. Singing River Health Servs. Found.*, 865 F.3d 285, 295 (5th Cir. 2017) ("The involvement of an experienced and well-known mediator is also a strong indicator of procedural fairness.") (internal quotation marks omitted).

At all times, the settlement negotiations were adversarial, non-collusive, and conducted at arm's length, consistent with the parties' vigorous advocacy throughout the litigation. *See, e.g.*, *Birks v. Small Cmty. Specialists LLC*, No. 8:23-cv-00837-BAH, 2024 U.S. Dist. LEXIS 238933, *13 (D. Md. Dec. 10, 2024) (holding that "adversarial encounters" throughout litigation and "engage[ment] in formal settlement mediation with the assistance of a professional mediator" "dispel any apprehension of collusion between the parties"); *Williams v. Duke University Health Sys., Inc.,* No. 1:22-cv-727, Dkt. 81 at ¶ 3 (M.D.N.C. March 19, 2026) (serious, informed, and non-collusive settlement negotiation weighs in favor of preliminary approval). Moreover, based on their knowledge and experience litigating privacy class actions, Plaintiffs' counsel believes that the Settlement is fair, reasonable, and adequate. *See Jiffy Lube*, 927 F.2d at 159; *Sims v. BB&T Corp*. No. 1:15-CV-732, No. 1:15-CV-841, 2019 U.S. Dist. LEXIS 75837, at *16 (M.D.N.C. May 6, 2019).

C. <u>The Settlement Provides Meaningful Relief to the Settlement Class (Rule 23(e)(2)(C)).</u>

The injunctive relief provided to the Settlement Class under this Settlement is more than adequate considering the effectiveness of the proposed injunctive relief; the costs, risks, and delay of trial and appeal; and provisions concerning the award of attorneys' fees. *See* Fed. R. Civ. P. 23(e)(2)(C).

1. **<u>The Settlement Provides Immediate Relief to the Settlement Class.</u>**

In reaching the Settlement, Plaintiffs have achieved their principal goal of halting or preventing what Plaintiffs assert is wrongful interception by third parties of allegedly personally identifiable information and searches conducted on the Labcorp Website, ensuring that the Tracking Technologies (and similar technologies) are not used on the Labcorp Website, that Labcorp must conduct annual compliance reviews and produce resulting reports, and that Labcorp must create and/or maintain a written policy regarding the use of third-party tracking technologies on the Website. And because there is no claims process or distribution of monetary relief, *see* Fed. R. Civ. P. 23(e)(2)(c)(ii), these business practice changes will impact the Settlement Class (and millions of Website users not in the Settlement Class) immediately and universally after the Effective Date. *See, e.g.*, *C.K. v. McDonald*, No. 2:22-cv-1791 (NJC) (JMW), 2026 U.S. Dist. LEXIS 17154, at **44-45 (E.D.N.Y. Jan. 15, 2026) ("[T]he effectiveness of any proposed method of distributing relief to the class need not be considered in a class action seeking only equitable relief.") (quotation omitted); *Bryan C. v. Gagne-Holmes*, No. 1:21-cv-00005-NT, 2024 U.S. Dist. LEXIS 117213, at *12 (D. Me. July 3, 2024) (Rule 23(b)(2) settlement "appears to effectively provide relief while treating class members equitably relative to each other").

2. **<u>The Costs, Risks, and Delay of Trial and Appeal.</u>**

In contrast to the significant, immediate benefits conferred by the Settlement, continued litigation would have carried significant costs, risks, and delay. *See* Fed. R.

Civ. P. 23(e)(2)(c)(i). For example, absent the Settlement, Plaintiffs were likely to have raised at least two significant discovery-related disputes affecting the scope of Labcorp's obligations to search for and produce information regarding all relevant Third-party Trackers (beyond the Meta Pixel and Google Analytics) and complete information regarding the installation and configuration of those Third-party Trackers during the relevant period. Further, Labcorp would have aggressively opposed class certification, moved for summary judgment, and challenged the admissibility of any expert testimony presented for those purposes. Joint Decl. ¶ 44. Labcorp would also likely have filed one or more *Daubert* motions to exclude Plaintiffs' experts on class certification or summary judgment. *Id.* And even if Plaintiffs prevailed at trial, Labcorp would undoubtedly have appealed any adverse judgment. *Id.* ¶ 49. At bottom, because the proposed injunctive relief achieves all the business practice changes Plaintiffs could have obtained, there is little to be gained from further litigation. *See id.* ¶ 50.

Throughout the litigation, Labcorp raised specific issues highlighting the risks of the case. For example, Labcorp argued that Plaintiffs did not have Article III standing because they were not patients of Labcorp and had not received services from Labcorp and also had not shown the disclosure of their private information. Joint Decl. ¶ 47. Labcorp also previewed an ascertainability-related challenge that class members without Labcorp accounts are not "readily identifiable" for class certification purposes. *Id.* ¶ 48; *cf. EQT Prod. Co. v. Adair*, 764 F.3d 347, 358 (4th Cir. 2014) (discussing the implicit requirement of reasonable identifiability).

Complex litigation like this involves "inherent uncertainty." *Brown v. Delhaize Am.*, *LLC*, No. 1:14-CV-00195, 2015 U.S. Dist. LEXIS 184265, at *5 (M.D.N.C. July 20, 2015). This is especially true where, as here, Plaintiffs sought to apply state wiretapping statutes to the operation of modern internet tracking technologies. *See Flanagan v. Flanagan*, 27 Cal. 4th 766, 768–69 (2002) (explaining the purpose of CIPA was to replace prior laws that permitted the recording of certain telephone conversations). This is also true on the issue of consent. *See Popa v. Harriet Carter Gifts, Inc.*, 772 F. Supp. 3d 592 (W.D. Pa. 2025) (granting summary judgment for defendant on WESCA claim because, *inter alia*, a reasonably prudent person would have been put on notice of browsewrap privacy policy). Moreover, proof of actual damages likely would have involved evidence of how certain third parties used certain data collected via Third-party Trackers. And while CIPA and WESCA provide for statutory damages, such damages would not have been a foregone conclusion here. *See, e.g.*, *Ex rel. Drakeford v. Tuomey*, 792 F.3d 364, 387 (4th Cir. 2015) (explaining that the Due Process Clause imposes limits on grossly excessive monetary penalties that go beyond what is necessary to vindicate the government's legitimate interests in punishment and deterrence); *Wakefield v. ViSalus, Inc.*, 51 F.4th 1109, 1124–25 (9th Cir. 2022) (vacating award of statutory damages on due process grounds because "in the mass communications class action context, vast cumulative damages can be easily incurred"); *see also* ECF No. 106 (MTD Order & Rec.) at 17 (rejecting Labcorp's rule of lenity argument but permitting Labcorp to raise it later in litigation). Though Plaintiffs remain confident in the merits of their case, a settlement here avoids the significant uncertainty inherent in continued litigation and delivers an excellent result for the Settlement Class.

3. Settlement Class Counsel Will Seek Reasonable Attorneys' Fees and Expenses.

Only after they reached an agreement in principle with respect to the substantive terms of the Settlement, did the parties negotiate and agree to terms governing the award of reasonable attorneys' fees and expenses. Joint Decl. ¶ 52. Pursuant to the Settlement, Settlement Class Counsel will move the court for an award of reasonable attorneys' fees and reimbursement of reasonable expenses up to an aggregate amount of $4.875 million. Settlement § 9.1. Labcorp expressly reserves the right to contest Settlement Class Counsel's request, except that the parties will not challenge or appeal the Court's order on attorneys' fees and expenses, provided it does not exceed $4.875 million. *Id.* § 9.2.

4. There Are No Additional Agreements to Disclose.

Finally, Plaintiffs must identify any agreements "made in connection with the proposal." Fed. R. Civ. P. 23(e)(3); *see* Fed. R. Civ. P. 23(e)(2)(c)(iv). This provision is aimed at "related undertakings that, although seemingly separate, may have influenced the terms of the settlement by trading away possible advantages for the class in return for advantages for others." Fed. R. Civ. P. 23(e)(2), 2003 adv. comm. note. There are no such agreements to disclose.

D. The Settlement Treats Settlement Class Members Equitably (Rule 23(e)(2)(D)).

The Settlement "treats class members equitably relative to each other" because the proposed injunctive relief applies to all Settlement Class Members uniformly, without discrimination among the Settlement Class. Fed. R. Civ. P. 23(e)(2)(D); *see Corrente v. Charles Schwab Corp.*, No. 4:22-cv-470, 2025 U.S. Dist. LEXIS 230708, *59 (E.D. Tex. Nov. 24, 2025) (holding Rule 23(e)(2)(D) was "easily met" where the requested injunctive relief, an antitrust compliance program, "applies uniformly to all members of the Settlement Class").

E. **<u>The Proposed Notice Program Will Provide Best-Practices Notice to Settlement Class Members.</u>**

Plaintiffs seek certification of a Settlement Class pursuant to Rule 23(b)(2), which means that notice is discretionary, not mandatory. Fed. R. Civ. P. 23(c)(3); *Wal-Mart Stores Inc. v. Dukes*, 564 U.S. 338, 362 (2011) ("The rule provides no opportunity for. . . (b)(2) class members to opt out, and does not even oblige the District Court to afford them notice of the action."); *Berry v. Schulman*, 807 F.3d 600, 613 (4th Cir. 2015) (rejecting a "blanket right to opt-out of a Rule 23(b)(2) settlement that provides purely injunctive relief . . . while individualized actual damages claims are retained").

Nevertheless, the parties have agreed to provide notice to members of the Settlement Class. This notice program (the "Notice Program") will publicize notice via a case-specific settlement website with user-friendly design that sets forth the injunctive relief agreed upon in the Settlement. Settlement § 6.2; Declaration of Cameron Azari (Epiq) Regarding Notice Plan. The settlement website will include (i) a "Contact Us" page with Settlement Administrator information; (ii) the Settlement Agreement, motions for preliminary approval and for attorneys' fees and any other important documents in the Action; and (iii) important dates and deadlines relating to settlement approval.

Settlement § 6.2. Additionally, the Notice Program will establish a toll-free telephone line for Settlement Class Members with an IVR system in English and Spanish to provide Settlement Class Members with responses to frequently asked questions and provide essential information regarding the litigation that is accessible 24 hours a day, 7 days a week. *Id.*, § 6.3. The Court should conclude the Notice Program is satisfactory in this 23(b)(2) settlement. *See Mayhew v. KAS Direct LLC*, No. 16 CV 6981 (VB), 2018 U.S. Dist. LEXIS 106680, at **24-30 (S.D.N.Y. June 26, 2018) (approving notice program for a Rule 23(b)(2) settlement that consisted of a website and automated toll-free hotline).

II. Certification of the Settlement Class for Settlement Purposes is Warranted

At this stage, the Court must also determine that it is likely to certify the Settlement Class for purposes of entering judgment on the proposed Settlement. Fed. R. Civ. P. 23(e)(1)(B)(ii). Each of the requirements of Rules 23(a) and 23(b)(2) are satisfied here for settlement purposes.

A. Rule 23(a) is Satisfied.

Numerosity. The Settlement readily satisfies the numerosity requirement as there were millions of individuals who accessed the Website during the relevant time period to obtain information and run searches, among other things. *See* Am. Compl. ¶ 14; *see also Doe v. Charleston Area Med. Ctr.*, 529 F.2d 638, 645 (4th Cir. 1975) ("Where the only relief sought for the class is injunctive and declaratory in nature, even speculative and conclusory representations as to the size of the class suffice as to the requirement of many.") (cleaned up).

Commonality. The claims of the Settlement Class are sufficiently common as they "depend upon a common contention . . . of such a nature that is capable of classwide resolution." *Dukes*, 564 U.S. at 350; Fed. R. Civ. P. 23(a)(2). Common questions of fact and of law underlie Settlement Class Members' claims including whether Labcorp facilitated or procured the actions of third parties and, in doing so, aided, agreed with, employed, or conspired with them to cause interception of the Settlement Class Members' communications; whether Labcorp obtained consent to use the Tracking Technologies; and whether the conduct of Labcorp violated CIPA and WESCA. *See In re Vizio, Inc.*, *Consumer Privacy Litig.*, No. 8:16-ml-02693, 2019 U.S. Dist. LEXIS 240266, at **31–32 (C.D. Cal. Jan. 4, 2019) (commonality established where defendant's "alleged data collection and disclosure practices were uniform" across all devices); *Temp. Servs. v. Am. Int'l Grp., Inc.*, No. 3:08-cv-00271-JFA, 2012 U.S. Dist. LEXIS 86474, at *5 (D.S.C. June 22, 2012) (indicating that the "commonality requirement is met where defendant engaged in a common course of conduct") (citation omitted).

Typicality. The Settlement Class Representatives' claims are "typical of the claims" of the Settlement Class. Fed. R. Civ. P. 23(a)(3). Typicality does not require total identity between representative plaintiffs and the class. *Deiter v. Microsoft Corp.*, 436 F.3d 461, 467 (4th Cir. 2006). Rather, typicality is satisfied here, where Plaintiffs' claims stem from the same course of conduct and are premised on the same legal theory. *Rodger v. Elec. Data Sys. Corp.*, 160 F.R.D. 532, 538 (E.D.N.C. 1995). Plaintiffs allege a common course of conduct whereby Labcorp facilitated the transmission of personally identifiable information, including sensitive health information, from Plaintiffs and Settlement Class Members (users of the Website) to third parties. *See In re Facebook Biometric Info. Privacy Litig.*, 326 F.R.D. 535, 543 (N.D. Cal. 2018) (typicality satisfied where class representatives used the same website as all the others). Further, Plaintiffs Howard and Hernandez are California residents whose claims are representative of the California Settlement Class; Plaintiff Reynolds is a Pennsylvania resident whose claims are representative of the Pennsylvania Settlement Class. *See* ECF No. 67 ¶¶ 7–9, 83, 89, 95.

Adequacy of Representation. Plaintiffs "will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). Plaintiffs have no interests in conflict with those of the Settlement Class. Moreover, Plaintiffs' commitment to the case demonstrates their adequacy as described above.

Appointment of Class Counsel. Separately, Rule 23(g) requires the Court to appoint class counsel to represent a settlement class. Considering counsel's work in this action, their collective familiarity and experience in handling similar actions (including with similar causes of action), and the resources they have committed to representing the Settlement Class, they should be appointed Settlement Class Counsel for the Settlement Class under Rule 23(g)(3) and confirmed under Rule 23(g)(1).

B. The Requirements of Rule 23(b)(2) are Satisfied.

The proposed Settlement Class satisfies Rule 23(b)(2), which permits class treatment where defendants "ha[ve] acted or refused to act on grounds that apply generally to the class, so that final injunctive relief . . . is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2). Here, Plaintiffs allege Labcorp engaged in a common course of conduct where it procured and facilitated the transmission of personally identifiable information to third parties. *See Berry*, 807 F.3d at 609 (explaining that the "paradigmatic Rule 23(b)(2) case" is one where the settlement provides "indivisible" injunctive relief to address a "uniform" practice of the defendant). Analogous Rule 23(b)(2) class settlements in privacy cases have been readily certified when they seek to enjoin a defendant's common, privacy-invading conduct. *See, e.g.*, *Gaston v. LexisNexis Risk Sols. Inc.*, No. 5:16-cv-00009, 2021 U.S. Dist. LEXIS 97538, *19 (W.D.N.C. May 24, 2021) (granting final approval to Rule 23(b)(2) settlement that enjoined defendant from electronically disclosing certain vehicle crash reports); *Matera v. Google Inc.*, No. 5:15-cv-04062-LHK, 2018 U.S. Dist. LEXIS 245919, at *7-8 (N.D. Cal. Aug. 31, 2017) (approving Rule 23(b)(2) settlement requiring that Google "cease all processing of email content" from class members that is used for advertising purposes); *Campbell v. Facebook*, No. 4:13-05996-PJH-SK, Dkt. 235 at 2 (N.D. Cal. Apr. 26, 2017), (granting preliminary approval where "[d]efendant is alleged to have acted or refused to act on grounds that apply generally to the Settlement Class").

Accordingly, the Court should allow the Rule 23(b)(2) Settlement Class to seek immediate prospective injunctive relief.

PROPOSED SCHEDULE FOR NOTICE AND FINAL APPROVAL

Plaintiffs have submitted a proposed order regarding preliminary approval concurrently with this Motion setting forth the proposed schedule of events from here through final approval. Specifically, the parties propose the following schedule:

Date	Event
No later than ten (10) business days following entry of this Order	Notice shall be posted on the settlement website, along with all relevant Court orders and documents.
No later than 30 calendar days before the Final Approval Hearing	Deadline to file Final Approval Motion and Attorneys' Fees Motion
No later than 21 calendar days before the Final Approval Hearing	Objection Deadline
No later than 14 calendar days before the Final Approval Hearing	Deadline to respond to Objections
July 28, 2026, at 10:00 am. (at least 100 days after the date of this motion, *see* 28 U.S.C. § 1715(d)), or on a date thereafter at the Court's convenience.	Final Approval Hearing

CONCLUSION

Plaintiffs respectfully request the Court (1) find it will likely approve the Settlement; (2) find it will likely certify the Settlement Class; (3) appoint Plaintiffs Hernandez and Howard as Settlement Class Representatives for the California Settlement Class and Plaintiff Reynolds as Settlement Class Representative for the Pennsylvania Settlement Class; (4) appoint specified Plaintiffs' counsel as Settlement Class Counsel; (5) authorize the manner and form of notice described herein and direct notice to the Settlement Class; and (6) schedule a final approval hearing.

Dated: April 16, 2026

/s/ Matthew R. Wilson
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CERTIFICATE OF WORD COUNT

I certify that the foregoing does not exceed 6,250 words, as calculated by word processing software, in compliance with Local Civil Rule 7.3(d).

This 16th day of April, 2026.

<u>/s/ Matthew R. Wilson</u>
Matthew R. Wilson

Counsel for Plaintiffs and the Proposed Settlement Class

CERTIFICATE OF SERVICE

I certify that on this day I served the foregoing Memorandum of Law to Defendants by filing it with the CM/ECF system, which has provided notice to all counsel of record for Defendants.

This 16th day of April, 2026.

/s/ Matthew R. Wilson
Matthew R. Wilson

Counsel for Plaintiffs and the Proposed Settlement Class