Christian Levis (*pro hac vice*)
LOWEY DANNENBERG, P.C.
44 South Broadway, Suite 1100
White Plains, NY 10601
Tel: (914) 997-0500
Fax: (914) 997-0035
clevis@lowey.com

Co-Lead Class Counsel for Plaintiffs and the Class

Diana J. Zinser (*pro hac vice*)
SPECTOR CALDES & CORRIGAN, PC
2001 Market Street, Suite 3420
Philadelphia, PA 19103
Tel: (215) 496-0300
Fax: (215) 496-6611
dzinser@scc.law

Co-Lead Class Counsel for Plaintiffs and the Class

Carol C. Villegas (*pro hac vice*)
LABATON KELLER SUCHAROW LLP
140 Broadway
New York, NY 10005
Tel.: (212) 907-0700
Fax: (212) 818-0477
cvillegas@labaton.com

Co-Lead Class Counsel for Plaintiffs and the Class

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ERICA FRASCO, et al., individually and on behalf of all others similarly situated,

Plaintiffs,

v.

FLO HEALTH INC., META PLATFORMS, INC., GOOGLE, LLC, and FLURRY, INC,

Defendants

Case No. 3:21-cv-00757-JD

JOINT DECLARATION OF CHRISTIAN LEVIS, CAROL C. VILLEGAS, AND DIANA J. ZINSER IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS SETTLEMENTS WITH DEFENDANTS FLURRY LLC, GOOGLE LLC AND FLO HEALTH, INC. AND CLASS COUNSEL'S MOTION FOR AWARD OF ATTORNEYS' FEES AND EXPENSES, AND PLAINTIFFS' APPLICATION FOR SERVICE AWARDS.

We, Christian Levis, Carol C. Villegas, and Diana J. Zinser, declare as follows:

1. We are, respectively, a partner at Lowey Dannenberg, P.C. ("Lowey"), a partner at Labaton Keller Sucharow LLP ("Labaton"), and a partner at Spector Caldes & Corrigan, PC ("SCC"). We are attorneys in good standing admitted *pro hac vice* before this Court for this Action and have been appointed as Co-Lead Class Counsel for the Plaintiffs and the Class in this matter ("Class Counsel").

2. We make this declaration in support of Plaintiffs' Motion for Final Approval of Class Settlements with Defendants Flurry LLC ("Flurry"), Google LLC ("Google"), and Flo Health, Inc. ("Flo") and in support of Class Counsel's Motion for Award of Attorneys' Fees and Expenses, and Plaintiffs' Application for Service Awards (the "Fee and Expense Application") in the above-captioned matter (the "Action") based on our personal knowledge and the knowledge of our respective attorneys and staffs. If called upon to do so, we will testify competently to the facts set forth herein.

3. Unless otherwise defined herein, capitalized terms have the same meaning as in the Class Action Settlement and Release Agreement as to Flurry (the "Flurry Settlement Agreement") (ECF No. 589-2), Class Action Settlement and Release Agreement as to Google (the "Google Settlement Agreement") (ECF No. 820-2), and the Stipulation and Agreement of Settlement as to Flo (the "Flo Settlement Agreement") (ECF No. 820-3). Unless otherwise noted, all ECF citations are to the docket in this Action.

I. The Settlements

4. The Settlements provide that Google, Flo, and Flurry, respectively, will pay $48 million, $8 million, and $3.5 million to create a non-reversionary settlement fund for the benefit of the Class in exchange for a release of Released Plaintiffs' Claims. The Settlements exchange the risks, expense, and delay associated with continuing the litigation against each of the Settling Defendants with immediate, substantial, and certain recovery that allowed Plaintiffs to pursue claims and prevail against non-settling Defendant Meta Platforms, Inc. ("Meta") in a jury trial.

5. The Settlements were the product of arm's length negotiations among highly experienced counsel and involved two mediators, Magistrate Judge Thomas S. Hixson and retired Ambassador Jeffrey Bleich. Initial settlement conferences were held with Magistrate Judge Hixson in 2022 and 2023 without any success. Settlement discussions did not resume until February 2024, more than three years after the case began and well after fact discovery closed. Accordingly, Plaintiffs and Class Counsel had a thorough understanding of the strengths and weaknesses of the claims asserted in the Action at the time they reached each Settlement.

6. Class Counsel believe the requested attorneys' fee award is reasonable based on Plaintiffs' Counsel's efforts, the risk they undertook by litigating this case for more than five years on a fully contingent basis, the complexity and magnitude of the case, and the results achieved. The requested payment of Litigation Expenses should also be approved because the expenses were reasonably and necessarily incurred during the prosecution of the Action; the Parties completed discovery, class certification, and summary judgment, and the trial was nearly completed when Plaintiffs settled with Flo.

7. Section II of this Declaration describes Plaintiffs' Counsel's work to prosecute this Action from its inception through July 31, 2025, the day testimony at trial concluded and immediately following Plaintiffs and Flo's agreement in principle to settle, leaving Meta as the sole defendant remaining at trial.

8. Section III sets forth a summary of (a) the total fee-compensable hours invested by Plaintiffs' Counsel in prosecuting this Action and the lodestar value of that work, and (b) Plaintiffs' Counsel's Litigation Expenses, incurred from the inception of the Action to July 31, 2025. We also recommend that Plaintiffs be granted Service Awards based on their efforts on behalf of the Class in this Action.

II. Plaintiffs' Counsel's Work on Behalf of Plaintiffs and the Class through July 31, 2025

A. Plaintiffs' Counsel's Investigation and Pleadings

9. Flo operates one of the most popular period, ovulation, and pregnancy tracking apps (the "Flo App") in the United States. The Flo App allows users to track their menstrual cycle, predict ovulation, and track pregnancy, among other things. Users are required to complete an onboarding survey the first time they use the Flo App, where they enter their age and select a goal, e.g., track their cycle, get pregnant, or track pregnancy, as well as answer specific questions about their reproductive health depending on the selected goal. As users continue to use the Flo App, they enter additional information about their periods, health symptoms, and sexual activities.

10. The FTC filed an action against Flo on January 13, 2021, alleging that Flo disclosed the intimate health information of millions of Flo App users to third parties, including Google, Meta, Flurry, and AppsFlyer, Inc. ("AppsFlyer"). *See* ECF No. 64. Following settlement of the FTC action, Flo admitted to Flo App users that it shared identifiable "information about your period and pregnancy" with third parties, including Google, Meta, and Flurry.

11. On January 29, 2021, Plaintiff Erica Frasco filed the initial complaint in this Action against Flo, alleging that unbeknownst to Flo App users and without their consent, Google, Meta, and Flurry intercepted these users' communications with Flo, including their health information, through Software Development Kits ("SDKs") in the Flo App. ECF No. 1.

12. Six later-filed actions were consolidated into the present Action, and on September 2, 2021, Plaintiffs filed the Consolidated Class Action Complaint asserting claims against Flo, Google, Meta, Flurry, and AppsFlyer. ECF No. 64. Thereafter, the Court appointed Ms. Villegas, Ms. Zinser, and Mr. Levis as Interim Co-Lead Counsel. ECF No. 80. This Order included the authority to negotiate and enter prospective settlement agreements with Defendants on behalf of the proposed Class. *Id.* at 2.

13. Google, Meta, Flurry, and AppsFlyer jointly moved to dismiss the Action on November 1, 2021. ECF No. 86. Flo separately filed its own motion to dismiss the Action on the same date. ECF No. 93. Plaintiffs opposed these motions (ECF Nos. 107, 109), and on June 6, 2022, the Court granted in part and denied in part the respective motions, dismissing only the Stored Communications Act claim against Flo and the unjust enrichment claim against Google, Meta, and Flurry, while finding the claims for alleged violations of the Confidentiality of Medical Information Act ("CMIA"), the California Invasion of Privacy Act ("CIPA"), the California Computer Data Access and Fraud and Abuse Act ("CDAFA"), the Federal Wiretap Act, the California Unfair Competition Law ("UCL"), and common law invasion of privacy had been well pled. ECF No. 158. All claims against AppsFlyer were dismissed, and AppsFlyer was subsequently voluntarily dismissed from the Action. ECF Nos. 158, 171.

B. <u>Fact Discovery</u>

14. The Parties engaged in extensive discovery. Over the course of two years, Plaintiffs and Defendants exchanged written discovery requests and responses, including: (1) serving 120 Requests for Production on Flo, 83 on Google, 85 on Flurry, and 120 on Meta; (2) serving 8 Interrogatories on Flo, 10 on Google, 10 on Flurry, and 17 on Meta; and (3) serving 230 Requests for Admission on Flo and 10 on Flurry. Class Counsel reviewed and analyzed over 100,000 documents produced by Defendants.

15. Plaintiffs also responded to 119 Requests for Production each, producing over 4,000 documents, and answered 37 Interrogatories and 138 Requests for Admission each.

16. The Parties raised and conferred on numerous discovery disputes, holding at least 30 court-ordered bi-weekly meet and confers over the course of four months. Ultimately, the Parties briefed over 20 discovery disputes for the Court, with the Court holding two discovery hearings. *See, e.g.*, ECF Nos. 100, 123, 134, 160, 164, 179, 195, 203, 205, 206, 207, 209, 212, 213, 218, 223, 264, 270, 300, 302, 304, 353.

17. Plaintiffs further engaged in third-party discovery, serving subpoenas on six third parties, moving to compel two third parties to comply with their respective subpoenas, reviewing and analyzing documents produced by the third parties, and deposing a corporate representative of Yahoo, Inc.

18. Class Counsel spent significant time preparing for and taking or defending fact depositions. Class Counsel deposed 13 current and former Flo, Google, Meta, and Flurry employees, took depositions of 5 corporate representatives of Defendants pursuant to Fed R. Civ. P. 30(b)(6), and defended the depositions of each of the 8 Plaintiffs.

C. <u>Expert Discovery and Class Certification</u>

19. Following the close of fact discovery on April 17, 2023 (ECF No. 267), Class Counsel engaged in extensive expert discovery. Plaintiffs offered three experts to testify on the highly technical and scientific aspects of the case and to rebut Defendants' collective eight expert witnesses. Class Counsel took the depositions of Defendants' eight experts and defended the depositions of Plaintiffs' three testifying experts and one consulting expert.

20. On September 21, 2023, Plaintiffs filed their first motion for class certification (ECF No. 330), and the Parties also filed their respective motions to exclude experts. *See* ECF Nos. 337, 381, 383, 385, 389, 392, 394, 395. The Parties fully briefed each of these motions, with Plaintiffs opposing Defendants' motions to exclude and filing replies in support of their motion for class certification and motions to exclude Defendants' experts.

21. On February 22, 2024, the Court terminated, without prejudice, Plaintiffs' initial class certification motion and the motions to exclude experts. ECF Nos. 419, 436. The Court directed the Parties to meet and confer on a new schedule for expert discovery, class certification, *Daubert* and dispositive motions. ECF No. 436. After consideration of the Parties' proposed schedule (ECF No. 437), the Court issued an Amended Scheduling Order on June 26, 2024. ECF No. 462.

22. In accordance with the Amended Scheduling Order, Class Counsel resumed expert discovery in April 2024, proffering two affirmative experts and a third expert to rebut Defendants' economic expert. Defendants proffered a total of five experts. Class Counsel again deposed each of Defendants' experts and defended the depositions of Plaintiffs' experts.

23. Following the conclusion of expert discovery, Plaintiffs renewed their motion for class certification on August 29, 2024. ECF No. 477. Defendants jointly opposed the motion for class certification (ECF No. 491).

24. On February 6, 2025, the Parties filed their respective motions to exclude experts. ECF Nos. 517, 519, 521, 525, 530, 532, 534. Plaintiffs moved to exclude Flo's experts Lorin Hitt and Chris Karkanias, Meta's expert Amalia Miller, and Defendants' joint expert Georgios Zervas. ECF Nos. 517, 519, 521, 530. Plaintiffs opposed Defendants' motions to exclude Serge Egelman, Jennifer Golbeck, and David Hoffman. ECF Nos. 545, 547, 556.

25. After *Daubert* motions were fully briefed and oral argument was held on May 15, 2025, the Court excluded Defendants' proffered expert Lorin Hitt and Plaintiffs' proffered expert David Hoffman from testifying at trial. See ECF No. 597.

26. On May 19, 2025, the Court entered an Order (the "Class Certification Order") certifying the following classes:

> [Nationwide Class for CMIA, breach of contract, and intrusion upon seclusion claims against Flo:] All Flo App users in the United States who entered menstruation and/or pregnancy information into the Flo Health App between November 1, 2016, and February 28, 2019, inclusive.
>
> [California Subclass for Constitutional invasion of privacy claims against Flo and CIPA § 632 claims against Meta and Google:] All Flo App users in California who entered menstruation and/or pregnancy information into the Flo Health App while residing in California between November 1, 2016, and February 28, 2019, inclusive.

ECF No. 605. The Class Certification Order appointed Class Counsel as counsel for both the Nationwide Class and the California Subclass and appointed Plaintiffs Jennifer Chen ("Chen"), Erica Frasco ("Frasco"), Tesha Gamino ("Gamino"), Autumn Meigs ("Meigs"), and Sarah

Wellman ("Wellman") as Class Representatives for the nationwide Class, with Chen, Gamino, and Wellman serving as Class Representatives for the California Subclass. *Id.*

D. Summary Judgment

27. On September 29, 2023, Google filed a Motion for Summary Judgment on each of Plaintiffs' claims, arguing that Plaintiffs: (a) lacked Article III standing; (b) consented to the disclosure of their reproductive health information; (c) lacked statutory standing under the UCL and CDAFA; (d) had not alleged valid aiding and abetting claims nor Wiretap Act and CIPA claims; and (e) could not prevail because Google lacked intent, fell under the vendor exception, and did not record Plaintiffs' reproductive health information. ECF No. 338. Plaintiffs opposed Google's motion, submitting a detailed 35-page brief with 90 exhibits that disputed Google's arguments and showed that Google knew and intended to get this data from Flo, Plaintiffs did not consent to Google's conduct, and Google recorded reproductive health information.

28. Plaintiffs defeated Google's motion except as to their UCL claim and aiding-and-abetting claims. *See* ECF No. 485 (order denying in part and granting in part Google's motion for summary judgment).

29. On February 6 and 7, 2025, Meta and Flo filed their respective motions for summary judgment, which Plaintiffs opposed. ECF Nos. 528, 536, 561, 565. Meta's arguments were similar to Google's in that Meta argued that it did not intercept or eavesdrop upon Plaintiffs' communications, as well as that Plaintiffs (a) consented to Meta's conduct; (b) lacked standing for their UCL and CDAFA claims; and (c) had not alleged valid aiding and abetting claims. Like with Google, Plaintiffs prepared a thorough opposition brief, complete with 32 exhibits disputing Meta's claims.

30. Plaintiffs similarly put forth a comprehensive opposition with numerous exhibits as to Flo, which argued that it was not a healthcare provider under the CMIA and that Plaintiffs' claims were time barred and foreclosed by a class action waiver.

31. Plaintiffs defeated Meta and Flo's motions for summary judgment on May 22,

2025, when the Court denied Meta's motion, except as to Plaintiffs' Federal Wiretap Act, CDAFA, and aiding-and-abetting claims, leaving the CIPA violation remaining for trial. ECF No. 608. As to Flo's motion for summary judgment, the Court rejected Flo's statute of limitations and class waiver arguments and denied summary judgment on Plaintiffs' CMIA claim. *Id.*

E. <u>Pre-Trial Matters and Trial</u>

32. On May 27, 2025, Class Counsel and counsel for Flo, Google, and Meta filed a Joint Proposed Pretrial Class Notice Plan pursuant to the Class Certification Order. ECF No. 612. Thereafter, the Court held a status conference on class notice on June 2, 2025, and directed the Parties to jointly file weekly status reports on class notice implementation. The first status report was filed on June 10, 2025. See ECF Nos. 613, 635. Class notice was completed on June 23, 2025. ECF No. 679.

33. Class Counsel spent extensive time preparing for trial against Flo, Google, and Meta by, *inter alia*, identifying exhibits and designating deposition testimony essential to proving the claims and rebutting Defendants' affirmative defenses; preparing motions *in limine*, proposed voir dire questions, jury instructions, the verdict sheet, and other pretrial submissions; and preparing Class Representatives and expert witnesses to testify at trial.

34. Plaintiffs also moved to exclude two new witnesses that Meta did not disclose until nearly two years after the close of fact discovery. ECF No. 595. After briefing and argument, the Court granted Plaintiffs' motion. ECF No. 693 at 62:6-63:20.

35. On June 12 and 20, 2025, Plaintiffs filed eight motions *in limine*, and Defendants filed seven motions *in limine* seeking to limit or exclude evidence to be presented at trial. ECF Nos. 640, 641, 642, 644, 645, 649, 653, 674. Specifically, Plaintiffs moved to: (1) preclude Defendants from offering evidence or argument about aggregate damages or the potential impact of a favorable judgment; (2) prevent Defendants from misstating the standard for intent under CIPA § 632; (3) exclude the admission of testimony by Meta's proposed witness, Steven Satterfield, whom it had previously refused to produce for a deposition; (4) prevent the introduction

of evidence that was not produced in discovery; (5) exclude evidence that Flo adhered to industry best practices or exercised due diligence; (6) exclude evidence of Flo's charitable contributions, community outreach, or other good acts; (7) exclude evidence about other apps or websites that use SDKs; and (8) exclude harassing exhibits about Plaintiffs.

36. The Parties also filed their respective Trial Briefs. ECF Nos. 637, 646, 647, 651.

37. On June 13, 2025, the Parties jointly filed proposed voir dire questions, a form of verdict, a pretrial conference statement, jury instructions, a witness list, and an exhibit list in accordance with the Court's Standing Order for Civil Jury Trials. ECF Nos. 654, 655, 656, 657, 658, 659. These submissions were the result of months of negotiations amongst the Parties, including multiple meet and confers and draft exchanges. Ultimately, the Parties disputed the verdict forms and the jury instructions for the CMIA, intrusion upon seclusion, breach of contract, and CIPA claims, as well as consent, the statute of limitations, and damages; they submitted competing proposals and statements in support of their respective positions. *See* ECF Nos. 655, 657.

38. Following a Pretrial Conference held on June 26, 2025, the Court entered a Pretrial Order scheduling trial to begin on July 21, 2025, setting time limits for the presentation of opening and closing statements and witness examinations, and otherwise setting forth how trial was to proceed. ECF No. 692. The Court further memorialized its decisions on the Parties' respective motions *in limine*. *Id.*

39. Prior to the start of trial, Plaintiffs and Google reached a settlement on July 3, 2025, and a Notice of Settlement and Request to Vacate Trial Date as to Google was filed on July 7, 2025. ECF No. 696.

40. Following the selection of eight jurors, trial began on July 21, 2025 on Plaintiffs' claims against Flo and Meta and continued for two weeks. Class Representatives Sarah Wellman, Jennifer Chen, Autumn Meigs, Tesha Gamino, and Erica Frasco testified on direct and cross-examination, answering questions regarding their personal health information for

consideration by the jury. *See generally* ECF Nos. 747, 748. Plaintiffs offered the expert testimony of two experts, Dr. Serge Egelman and Dr. Jennifer Golbeck. ECF Nos. 748, 749, 751. Class Counsel additionally examined two Meta employees and cross-examined Defendants' two experts. ECF Nos. 750, 751.

41. Throughout the trial, Plaintiffs' counsel prepared for and responded to Defendants' objections, objected to Defendants' questioning, and raised and responded to motions at the beginning of each trial day.

42. Shortly before closing arguments were to be presented, Plaintiffs and Flo reached a settlement, and Flo was dismissed from trial on that basis. *See* ECF No. 772. The trial concluded on August 1, 2025, and the jury deliberated on the verdict, ultimately rendering a Plaintiffs' verdict against Meta.

F. <u>Settlement Negotiations and Key Terms of the Respective Settlements</u>

43. In May 2022, the Action was referred for a Settlement Conference to Magistrate Judge Thomas S. Hixson. ECF No. 156. In connection with this conference, Plaintiffs prepared and submitted a letter detailing the evidence supporting their allegations, including the results of expert testing that confirmed their allegations. The Settlement Conference occurred on August 23, 2022, and did not result in a settlement. ECF No. 177.

44. Plaintiffs and Flurry continued to engage in settlement conversations through Judge Hixson, having another Settlement Conference on May 1, 2023 that was ultimately unsuccessful. ECF No. 298.

45. The Action was referred to Judge Hixson for Settlement Conferences again in February 2024. ECF No. 420. Prior to participating in these Settlement Conferences, the Parties again submitted detailed mediation statements. Plaintiffs prepared four separate mediation statements for each Defendant that provided a comprehensive overview of the evidence and their chances of success at class certification and on the merits as well as presentations for the mediator.

46. Plaintiffs participated in settlement conferences mediated by Magistrate Judge

Hixson with (a) Google on April 30, 2024, (b) Meta on May 6, 2024, (c) Flo on May 7, 2024, and (d) Flurry on June 6, 2024, none of which resulted in a settlement. ECF Nos. 438, 441, 443, 456.

47. Subsequently, on September 19, 2024, the Court referred the Parties to private mediation before retired Ambassador Jeffrey Bleich. ECF No. 484. Prior to engaging in this mediation, the Parties submitted mediation statements and engaged in numerous communications with Ambassador Bleich. Plaintiffs again prepared detailed mediation statements for each defendant.

48. Between October 2024 and February 2025, Class Counsel and Defendants engaged in multiple mediation sessions with Ambassador Bleich. Formal mediation was unsuccessful as to Flo, Google, and Meta; however, Plaintiffs and Flo, Google, and Meta continued to utilize Ambassador Bleich as a mediator throughout the remainder of the Action. These informal communications with Ambassador Bleich serving as mediator included substantive discussions of the strengths and weaknesses of the Parties' respective cases.

49. In the case of Flurry, the discussions concerned the significant risk of non-recovery in light of Flurry's financial condition. Flurry dissolved while the litigation was ongoing, and based on Flurry's representations, $3,500,000 represented all the available cash on hand, which could either be used to fund a settlement or continue defending the litigation. Even if Plaintiffs prevailed on all claims at trial, continued litigation presented the significant risk that any recovery would be limited, or the judgment would be unenforceable.

50. As a result, on October 30, 2024, Plaintiffs and Flurry reached an agreement in principle to settle following extensive negotiations facilitated by Ambassador Bleich.

51. The Flurry Settlement Agreement was executed on March 20, 2025. *See* ECF No. 589. Plaintiffs filed an unopposed Motion for Preliminary Approval of the settlement with Flurry on March 21, 2025, which the Court approved, subject to additional proceedings with respect to the provision of notice. ECF No. 597.

52. During settlement negotiations, Google asserted that it did not use the Flo App

data for any purpose other than to provide services to the Flo App and did not use the data to personally identify any users, creating challenges to proving the element of intent under CIPA. Google also supplemented its discovery responses just prior to trial at Plaintiffs' request and asserted that it had data associated with only roughly 1.3 million unique Flo App users nationwide. Since the Court certified only a California Subclass of Flo App users with respect to Plaintiffs' CIPA claim against Google, had this evidence been presented to the jury and credited, the damages caused by Google's alleged conduct could have been drastically reduced from their theoretical maximum, with significant trial and appellate risk ahead.

53. After various discussions between Plaintiffs, Google and Ambassador Bleich, the Parties reached an agreement in principle to settle Plaintiffs' claims against Google for the sum of $48,000,000 approximately two weeks before trial.

54. Plaintiffs and Google continued to diligently negotiate the material terms of the Google Settlement Agreement, which was fully executed as of August 8, 2025.

55. As to Flo, Class Counsel's views on the strengths and challenges were further informed as trial progressed. During trial, Flo moved for judgment as a matter of law on the claim with statutory damages, the CMIA claim. ECF No. 751 at 1094:15-1095:3. In response, the Court noted that Plaintiffs appeared to have "an insurmountable problem" in that the evidence adduced at trial did not satisfy the statutory definitions of "patients," "provider of healthcare," or "medical information." *Id.* at 1104:3-7; *see* Cal. Civ. Code §§ 56.05(j), (m), (p). Had Flo's motion been granted, Plaintiffs' only remaining claims against Flo would have been breach of contract and privacy claims, for which Plaintiffs sought only nominal damages. The Class could have been left with provable damages as to Flo of only $13 million, with significant trial and appellate risk.

56. Following additional settlement negotiations, on July 30, 2025, Plaintiffs and Flo reached an agreement in principle to settle Plaintiffs' claims against Flo for the sum of $8,000,000 and executed the Flo Settlement Agreement on September 22, 2025.

57. Under the terms of the Settlement Agreements, the Class is the previously

certified Nationwide Class (with the California Subclass): "all Flo App users in the United States who entered menstruation and/or pregnancy information into the Flo Health mobile application between November 1, 2016 and February 28, 2019, inclusive." *See* ECF No. 605; Google Settlement Agreement § 1(J); Flo Settlement Agreement ¶ 1(j); Flurry Settlement Agreement § 1(I).

58. The Settlement Funds will be used to pay all costs of the Settlements, including Notice and Settlement Administration Costs, Taxes, any Court-approved attorneys' fee and litigation expenses, service awards to Plaintiffs, any other fees and costs approved by the Court, and payments to Authorized Claimants. *See* Google Settlement Agreement § 2(C); Flo Settlement Agreement ¶ 3; Flurry Settlement Agreement § 3(C).

59. Flo has also agreed to non-monetary relief whereby it will display on the landing page of its website a prominent notice about Flo's commitment to privacy, along with a prominent link to its Privacy Policy, in large font, for one year from the date the final approval order and judgment become final. Flo Settlement Agreement ¶ 6.

60. In exchange, the Releasing Plaintiff Parties will release, relinquish, and discharge all Released Plaintiffs' Claims against the Released Google Parties, Released Flo Parties, and Released Flurry Parties. Google Settlement Agreement § 4; Flo Settlement Agreement ¶ 11; Flurry Settlement Agreement § 6(A).

61. The Net Settlement Funds will be distributed to Authorized Claimants who submit a timely and valid Claim Form. The Claim Form has been designed to make it easy for Class Members to recover and to ensure prompt and accurate delivery of the Net Settlement Funds only to those eligible to receive the proceeds.

62. To account for the claims under CIPA, which provide statutory damages, Authorized Claimants who were residents of California during the Class Period will receive twice the *pro rata* share of Authorized Claimants who are residents of other states.

63. At the point that making further distributions to Authorized Claimants is no

longer economical or feasible, the Settlement Agreements provide that any unclaimed balances remaining in the Net Settlement Funds shall be contributed to a non-profit, non-sectarian 501(c) organization to be mutually agreed upon by Class Counsel, Google's Counsel, Flo's Counsel, Flurry's Counsel and approved by the Court, or as otherwise ordered by the Court. Google Settlement Agreement § 9(I)(viii); Flo Settlement Agreement ¶ 48(h); Flurry Settlement Agreement § 9(F)(vii).

64. The settlement negotiations were hard-fought, with Google's interests represented by Cooley LLP, Flo's interests represented by Dechert LLP, and Flurry's interests represented by Hunton Andrews Kurth LLP, top-tier firms with experience litigating similar cases. Moreover, negotiations occurred concurrently while Class Counsel fiercely prosecuted the Action and prepared to try the case. The Settlements themselves reflect difficult, non-collusive negotiations and provide the best outcome possible for the Class.

65. Accordingly, Class Counsel strongly endorse the Settlements as being fair, reasonable, and adequate. In recommending the respective Settlements with Google, Flo, and Flurry, Class Counsel analyzed the strength of Plaintiffs' case against the risk of continued litigation. The Settlements provide a favorable recovery for the Class and eliminate the risks of non-recovery or limited recovery and the substantial costs associated with further litigating through trial and post-trial proceedings as to Flurry and Google and through the end of trial and post-trial proceedings as to Flo.

III. Class Counsel's Request for Attorneys' Fees and Expenses and Plaintiffs' Application for Service Awards

66. In accordance with the Settlement Notice, Class Counsel request an attorneys' fee award of $19,366,666.67, representing a one-third award from the Google and Flo Settlement Funds and 20% from the Flurry Settlement Fund, which translates to a blended rate of 32.5%. Class Counsel also seek $ 2,091,517.74 as reimbursement for litigation expenses. Class Counsel ask that interest be awarded on the attorneys' fees and Litigation Expenses, accruing for the same

time period and at the same rate as earned by the Settlement Fund until paid.

67. Class Counsel believe the requested attorneys' fee award is reasonable based on, among other things, Plaintiffs' Counsel's extensive efforts, the risk they undertook, and the results Class Counsel achieved, as described above.

68. In support of Class Counsel's Fee and Expense Application, Plaintiffs' Counsel have submitted declarations summarizing the hours worked and corresponding lodestar, as well as the expenses incurred in prosecuting the Action. *See* Declaration of Christian Levis ("Levis Decl."); Declaration of Carol C. Villegas ("Villegas Decl."); Declaration of Diana J. Zinser ("Zinser Decl."); Declaration of Kent M. Williams ("Williams Decl."); Declaration of William D. Harris II ("Harris Decl."); and Declaration of Kas L. Gallucci ("Gallucci Decl."), simultaneously filed herewith. The requested award of $19,366,666.67 represents a multiplier of 0.45 based on the total lodestar of $42,595,383.00 incurred by all Plaintiffs' Counsel. Each firm's declaration includes a schedule that summarizes and categorizes the hours worked from the inception of this Action through July 31, 2025, and the corresponding lodestar.

69. Lodestar calculations are based on each firm's current (2026) hourly rates and were prepared based upon daily time records maintained by attorneys and professional staff at the firm. Lodestar figures do not include expense items.

70. Class Counsel reviewed their firm's time records to confirm both the accuracy of the entries and the necessity and reasonableness of the time expended in the Action. Further, each firm reviewed its time records to ensure compliance with the instructions of the Court, as well as the accuracy, necessity, and reasonableness of the time expended. *See* Levis Decl. ¶ 5; Villegas Decl. ¶ 5; Zinser Decl. ¶ 5; Williams Decl. ¶ 5; Harris Decl. ¶ 5; Gallucci Decl. ¶ 5. As a result of this review, certain reductions were made to the time either in the exercise of billing judgment or to conform with each firm's practice. Time spent by attorneys and staff who worked fewer than 10 hours on the case has been omitted from the lodestar calculation.

71. The following chart summarizes the aggregate hours and lodestar of Plaintiffs' Counsel

from inception of the Action through July 31, 2025, as set forth in more detail in each firm's declaration:

Firm Name	Hours	Lodestar
Lowey Dannenberg, P.C.	18,686.3	$18,771,187.00
Labaton Keller Sucharow LLP	17,248.8	$12,548,861.00
Spector Caldes & Corrigan, PC	10,402.5	$7,290,387.00
Williams Law Firm/Siri & Glimstad LLP	1,025.1	$1,260,873.00
Harris Legal Advisors LLC	1,509.3	$1,715,764.50
Marron PC	1,292.1	$1,008,310.50
TOTAL:	50,164.1	**$42,595,383.00**

72. The requested reimbursement for litigation expenses should also be approved because the expenses were reasonably and necessarily incurred in the prosecution of the Action.

73. The declarations accompanying the Fee and Expense Application include each firm's costs and expenses by category from inception of the Action through July 31, 2025. In addition, the Villegas Declaration includes a summary of expenses paid from a litigation fund created by Class Counsel for certain litigation expenses. As stated in each of the declarations, expense items are recorded separately, and they are not duplicated in the respective firm's current hourly rates. Further, expense items do not contain any general overhead costs and do not contain a surcharge.

74. Plaintiffs' Counsel seek a reimbursement of expenses totaling $2,091,517.74 plus interest at the same rate as earned by the Settlement Fund.

75. The total combined expenses of Plaintiffs' Counsel are as follows:

Expense Categories	Cumulative Expenses
Outside Duplicating	$11,969.22
In-House Duplicating/Printing	$17,282.65
Witness/Service/Filing Fees	$30,219.92
Court & Deposition Reporting/Transcripts	$228,813.21
Computer Research/Databases/Docket Fees	$125,527.35

Long Distance Telephone/Conference Calling	$302.31
Postage/Overnight Mail/Messenger	$10,840.33
Expert/Consultant Fees	$951,491.11
Mediation Fees	$122,500.00
Litigation Support/Document Hosting	$224,967.87
Travel (air/ground transportation, meals, hotel, trial "War Room")	$354,713.08
Local Work-Related Transportation/Meals	$11,820.29
Miscellaneous	$1,070.40
TOTAL	**$2,091,517.74**

76. Plaintiffs Jennifer Chen, Erica Frasco, Tesha Gamino, Madeline Kiss, Autumn Meigs, Justine Pietrzyk, Leah Ridgway, and Sarah Wellman have been actively involved in the prosecution of this Action and witnessed first-hand the challenges of bringing this suit. Notwithstanding the difficulties, each carried out their responsibilities as prospective or appointed class representatives.

77. Accordingly, Plaintiffs Chen, Frasco, Meigs, Gamino, and Wellman seek service awards of $25,000 each, and Plaintiffs Kiss, Pietrzyk, and Ridgway request $10,000 each.

78. Class Counsel believe the requested awards are reasonable in light of the time and effort Plaintiffs invested in the case, and the results generated by their involvement, including in the jury verdict reached at trial. *See* Chen Decl.; Frasco Decl.; Gamino Decl.; Kiss Decl.; Meigs Decl.; Pietrzyk Decl.; Ridgway Decl.; Wellman Decl..

79. The Settlement Notice informed the Class that Plaintiffs may seek Service Awards totaling no more than $155,000.

80. For the reasons set forth above and in the accompanying Fee and Expense Application, we respectfully submit that the Fee and Expense Application is reasonable, supported by the facts and law, and should be granted.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 20th day of August 2026, at White Plains, New York.

/s/ Christian Levis
Christian Levis

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 20th day of August 2026, at New York, New York.

/s/ Carol C. Villegas
Carol C. Villegas

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 20th day of August 2026, at Berwyn, Pennsylvania.

/s/ Diana J. Zinser
Diana J. Zinser