

EXHIBIT 2

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

IN RE ADVOCATE AURORA HEALTH
PIXEL LITIGATION

Lead Case No. 22-CV-1253-JPS

(Consolidated with Case Nos. 22-CV-1278-
JPS; 22-CV-1305-JPS; 23-CV-00259-JPS;
23-CV-00260-JPS)

This Document Relates to: All Actions

**JOINT DECLARATION OF TERENCE R. COATES AND GARY M. KLINGER IN
SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT**

We, Terence R. Coates and Gary M. Klinger, hereby state that the following is true and accurate and based on our personal knowledge:

1. We are members of Class Counsel, along with Dylan J. Gould of Markovits, Stock & DeMarco, LLC and Alexandra Honeycutt of Milberg Coleman Bryson Phillips Grossman PLLC. We have monitored our firms' and the other Plaintiffs' firms' participation in this matter from 2022 to the present. The other Plaintiffs' firms and attorneys include Mary C. Flanner and Nola J. Hitchcock Cross of Cross Law Firm, S.C. (Milwaukee, WI); Bryan L. Bleichner of Chestnut Cambronne (Minneapolis, MN); Joseph M. Lyon of The Lyon Firm (Cincinnati, OH); Bryan Thompson of Chicago Consumer Law Center (Chicago, IL); John Emerson of Emerson Firm LLP (Houston, TX); James Zouras of Stephan Zouras, LLP (Chicago, IL); Stephen R. Basser of Barrack, Rodos & Bacine (San Diego, CA); Michael Kind of Kind Law (Las Vegas, NV); and David Almeida of Almedia Law (Chicago, IL). The contents of this Declaration are based upon our personal knowledge, our experience in handling many class action cases, and the events of this litigation.

2. As Class Counsel, our firms have been centrally involved in all aspects of this Litigation from the initial investigation to the present. Class Counsel and Advocate Aurora's counsel are experienced in class action litigation.

3. Class Counsel sought to utilize the resources within Plaintiffs' counsel to efficiently litigate this matter on behalf of Plaintiffs. With this in mind, Class Counsel took steps to remove the potential for duplication of work on behalf of Plaintiffs' counsel. For example, we divided up the research and drafting of the Amended Consolidated Complaint, portions of the motion for preliminary approval, portions of the motion for attorneys' fees, expenses and class representative service awards, and portions of the motion for final approval.

**PRE-SUIT INVESTIGATION, INFORMAL COORDINATION, AND THE
CONSOLIDATED COMPLAINT**

4. Class Counsel and other Plaintiffs' counsel conducted significant pre-suit investigation before the filing of the initial complaint in the Eastern District of Wisconsin. This included retaining a data privacy expert to determine where the pixel was located on Defendant's Website and the types of information being transmitted through the pixel without Plaintiffs' consent.

5. Class Counsel expended significant time and effort working with other Plaintiffs' counsel to coordinate and streamline this litigation. There were several similar class action cases against Advocate Aurora filed in this District, the Northern District of Illinois, and other courts. Class Counsel was able to work cohesively with other Plaintiffs' counsel to centralize all the cases to this District and then consolidate them into one, unified proceeding. This took substantial effort and skill to ensure that all Plaintiffs' counsel were working together on behalf of Plaintiffs to promote achieving the best result possible for the Class under the circumstances of this case. The

fact that Class Counsel received the support of all Plaintiffs' counsel was instrumental to moving this case forward efficiently for the Class.

6. The Amended Consolidated Complaint is a robust, detailed complaint that took a lot of resources to compile, and that is 105-pages in length including 11 causes of action. In advance of filing the Amended Consolidated Complaint, certain Plaintiffs participated in extensive plaintiff vetting to ensure that they would be in a position to participate as adequate class representatives in this case. Moreover, Class Counsel conducted extensive legal research to determine the best claims and theories to assert in the Amended Consolidated Complaint.

MEDIATION

7. The Parties participated in two mediation sessions, one in person and one remotely, before Retired United States Magistrate Judge David E. Jones, that resulted in the settlement in principle of a \$12,225,000 non-reversionary common fund. Before the mediation, Plaintiffs issued detailed settlement discovery requests to Defendant and received responses to those requests. The responses include information relevant to the allegations in the Complaint, the class size, the number of individuals with credentials for Defendant's MyChart portal, and information relevant to Plaintiffs' damages claims. The settlement negotiations were contentious, yet professional and steadily guided by Judge Jones. The settlement in principle was negotiated while the viability of Plaintiffs' claims remained uncertain given that Plaintiffs' data privacy-related claims were relatively novel and cutting edge and the *Kurowski v. Rush Sys. for Health*, 659 F. Supp. 3d 931 (N.D. Ill. 2023) decision from March 3, 2023 was an active decision within the Seventh Circuit that concluded there were no viable damages claims in a similar data pixel privacy class action. Plaintiff grew more informed about their case through each mediation session and were able to receive vital information from Defendant with Judge Jones's guidance in the second mediation

session. We were informed through the two mediations and the informal discovery we received from Defendant and were in a position to analyze the strengths and weaknesses of Plaintiffs' claims.

8. After the mediation sessions with Judge Jones, the Parties entered into a detailed Settlement Agreement that took several months to finalize. The Settlement Agreement included that the \$12,225,000 Settlement Fund would be allocated as follows: Settlement Administration costs and expenses, Class Counsel's attorneys' fees and expenses, and Class Representatives' Service Awards will be deducted from the Settlement Fund, then a pro rata cash payment will be made to Class Members capped at \$50 per Class Member submitting a valid claim form. To the extent any funds remain in the Settlement Fund after the allocation of the pro rata cash payments, any remaining funds will be allocated as a *cy pres* distribution including any funds that exist resulting from Class Members who do not timely cash/deposit their pro rata cash payments.

9. To Class Counsel's knowledge, the resolution of this case was only the third known pixel class action settlement when it was reached in mid-2023.

SIMILAR PIXEL DATA PRIVACY SETTLEMENTS

10. Class Counsel's opinion that this \$12,225,000 Settlement is fair and reasonable for the roughly 2,540,567 Class Members is informed by other pixel data privacy class action settlements based on the per class member recovery amount. For example, the following chart identifies the per class member value based on the common fund settlement amount for certain recent similar cases:

Case Name	Case Number	Settlement Amount	Class Size	Per Person
<i>John v. Froedtert Health, Inc.</i>	No. 23-CV-1935 (Milwaukee County Circuit Court)	\$2,000,000	435,000	\$4.59
<i>In re Novant Health,</i>	No. 1:22-cv-	\$6,660,000	1,362,165	\$4.89

<i>Inc.</i>	00697 (M.D.N.C.)			
<i>In re Advocate Aurora Health Pixel Litigation</i>	No. 22-CV-1253 (E.D. Wis.)	\$12,225,000	2,540,567	\$4.82
<i>Doe v. Partners Healthcare System, Inc.</i>	No. 19-1651 (Superior Court of the Commonwealth of Massachusetts)	\$18,400,000	3,000,000	\$6.10

Class Counsel and Plaintiffs believe that the Settlement in this case is fair and reasonable in that it is consistent with the settlement amount recovered per class member in other recent pixel data privacy class action settlements. Mr. Klinger was a member of class counsel for plaintiffs in *Froedtert* and both of us are members of class counsel in *In re Novant Health*.

CLASS MEMBERS OVERWHELMING SUPPORT THE SETTLEMENT

11. The Class responded in amazing fashion to the Settlement. As of February 24, 2024, the Settlement Administrator has received 570,973 claims. The Settlement Administrator has already deemed 529,912 of these claims valid. The 529,912 valid claims to date from the roughly 2,540,576 Class Members equals a valid claims rate of roughly 20.86%. This valid claim rate is outstanding and demonstrates the Class’s overwhelming support for the Settlement. In Class Counsel’ experience, a 10% claims rate, let alone a 10% valid claims rate, is a strong claims rate in data privacy class action settlement. The 20.86% valid claims rate in this case is higher than the claims rate that Class Counsel has experienced in any other data privacy settlement. In our collective experience from handling over 200 data privacy class actions, claims rates in data privacy cases have historically ranged between 1-10%.

12. There are 71 Class Members who requested to be excluded from the Settlement and 5 Class Members who submitted objections to the Settlement. The 71 opt outs are very minimal and comprise only roughly .003% of the Class. The 5 objections are also very low for a Class of

roughly 2.5 million Class Members and comprise only roughly .0002% of the Class. The low number of opt outs and objections compared against over half a million valid claims under the Settlement strongly indicate that the Class overwhelmingly supports the Settlement.

THE NOTICE PROGRAM WAS CALCULATED AND EFFECTIVE

13. Class Counsel worked closely with Kroll to create a simple claim process that included a postcard notice with a tear-off claim form and the ability to submit claims online through the Settlement Website. The postcard notice with tear-off claim form was the Class's preferred method of claim submission with 363,304 claims being submitted via mail and 207,659 claims being submitted electronically through the Settlement Website (570,963 total claims). With 529,912 of the 570,963 claims being valid claims (92.8% valid claims rate). The astounding 20.86% valid claims rate (529,912 valid claims out of 2,540,567 Class Members) by itself shows that the notice program was effective. Furthermore, Kroll indicated that the notice reached 98.18% of the Class, which exceeds the Federal Judicial Center's guidance that 70-95% of the Class should receive notice to comply with due process. The data from this paragraph can be found in Kroll's declaration, filed concurrently.

14. Our experience in handling many other class action settlements permitted us to make the informed opinion that including a postcard notice with tear-off claim form in the case would very likely result in a higher claims rate.

CLASS COUNSEL'S ATTORNEYS' FEES & EXPENSES ARE REASONABLE

15. Under the Settlement, Class Counsel may seek up to 35% of the Settlement Fund (\$4,278,750) as attorneys' fees and up to \$30,000 in expenses.

16. Class Counsel have undertaken this case on a contingency fee basis and have not received any payment for their work in this case to date and have not been reimbursed for any of their litigation expenses.

17. Class Counsel's request for attorneys' fees of \$4,278,750 (ECF Nos. 38, 39) was reasonable under the circumstances of the case at that point given the number of claims as of that date (roughly 160,000 claims) and the then known Settlement Administrator fees and expenses (a minimum of \$1,600,000). In the Memorandum in Support of Plaintiffs' Motion for Attorneys' Fees, Expenses, and Class Representative Service Awards (ECF No. 39), Class Counsel noted that the requests for attorneys' fees, expenses and service awards were "subject to being updated before the Final Approval hearing." This was, in part, because Class Counsel did not know the final number of valid claims under the Settlement nor the final amount of Kroll's costs and expenses. Now that the claims total has substantially increased to over 570,000 claims with 529,912 of them being valid claims and the resulting increased in Kroll's Settlement Administration costs that are now known to be \$2,750,000, Class Counsel has reevaluated the request for attorneys' fees under Seventh Circuit precedent. Notably, Class Counsel have reduced their fee request from \$4,278,750 (35% of the Settlement Fund and roughly 40% of the net Settlement Fund) to \$3,250,000 (roughly 26.6% of the Settlement Fund and 34.5% of the net Settlement Fund).

18. Class Counsel have spent significant time and expenses pursuing this matter on behalf of the Class. Class Counsel and co-counsel's hourly rates reflect their experience and are customary hourly rates for complex litigation and class action cases. To date, Class Counsel and Plaintiffs' counsel have expended approximately 2075.50 hours for a lodestar total of \$1,590,114.55 prosecuting this matter on behalf of Plaintiffs. Class Counsel will continue to expend substantial time and effort overseeing settlement administration and claims, attending the final approval hearing, and overseeing the distribution of settlement benefits to the over half a million Class Members who have submitted valid claims. The \$3,250,000 fee request equates to a multiplier of 2.04x based on Plaintiffs' counsel's current lodestar of \$1,590,114.55. Class Counsel

will continue to spend significant time and lodestar overseeing this Settlement, including preparing for and attending the March 8, 2024 Final Approval Hearing and overseeing the administration of the Settlement payments to over 500,000 Class Members. Class Counsel predict that if their request for \$3,250,000 in fees is granted, by the conclusion of this case, Plaintiffs' counsel's collective lodestar multiplier will be significantly less than 2x (regardless of any potential appeals).

19. As of November 2023, Class Counsel incurred expenses of \$23,356.02 directly related to this litigation. The \$23,356.02 in reasonable expenses all relate to this litigation and were necessary for the quality of result achieved. For example, over half of the expenses relate to attending the first mediation session in person in Milwaukee and paying for the mediator's services. The rest of Plaintiffs' counsel's expenses, as identified for each firm in Exhibit A to the Declaration of Terence R. Coates in Support of Plaintiffs' Motion for Attorneys' Fees, Expenses, and Class Representative Service Awards (ECF No. 39-001, Exhibit A), consist of filings fees for complaints and admission applications, Pacer and research costs, mailing costs, outside tech costs, and copy costs. Given that there were multiple underlying complaints that were consolidated into this proceeding including cases from other jurisdictions, Plaintiffs' expenses of \$23,356.02 are reasonable and warrant reimbursement.

THE NET SETTLEMENT FUND AND PROJECTED PAYMENTS PER VALID CLAIM

20. In deducting Kroll's Settlement Administration fees and expenses of \$2,750,000, the Class Representative Service Awards of \$35,000 (\$3,500 each for the 10 Class Representatives), and Class Counsel's expenses of \$23,356.02, the net amount remaining in the Settlement Fund would be \$9,416,643.98. Class Counsel's attorneys' fees request of \$3,250,000 is 34.51% of the net Settlement Fund amount.

21. The amount remaining in the Settlement Fund after the deduction of attorneys' fees (\$3,250,000), Class Counsel' litigation expenses (\$23,356.02), Kroll's Settlement Administration fees and expenses (\$2,750,000), and the Class Representative Service Awards (\$35,000), is \$6,166,643.98. Considering there are 529,912 valid claims under the Settlement, the pro rata cash payment per valid claim currently is \$11.64 (\$6,166,643.98 / 529,912).

**THE CLASS REPRESENTATIVE SERVICE AWARDS OF \$3,500.00 ARE
REASONABLE AND JUSTIFIED**

22. Plaintiffs have stayed informed about this litigation, reviewed, and approved the settlement demand and final settlement amount and Settlement Agreement, and spent substantial time and effort protecting the Class's interests. Furthermore, each reviewed, considered, and submitted Declarations in support of this Settlement. ECF Nos. 39-002 through 39-011. Accordingly, the \$3,500.00 Class Representative Service Awards to the Class Representatives are reasonable given their efforts on behalf of the Class in this matter. Furthermore, the Class Representative Service Awards here are less than what has been approved in other common fund data privacy class action settlements. *See Lutz v. Electromed, Inc.*, No. 0:21-cv-02198 (D. Minn.) (approving individual service award of \$9,900).

23. Plaintiffs were informed about the status of settlement negotiations and remained engaged as the Class Representatives at all times during the pendency of this matter. They have no conflicts with the Class they represent.

THE SETTLEMENT IS FAIR, REASONABLE AND A SUBSTANTIAL RECOVERY

24. Furthermore, in our experience in handling over 200 data privacy class action cases for plaintiffs including several other data pixel class action settlements, we confirm that the \$12,225,000 non-reversionary common fund settlement is fair and reasonable for 2,540,567 Class

Members. The Settlement provides immediate and real monetary payments from the Settlement Fund. Furthermore, there are no undisclosed agreements made in connections with this Settlement. We declare under penalty of perjury under the laws of the United States of America that the forgoing is true and correct. Executed on February 23, 2024.

/s/ Terence R. Coates
Terence R. Coates

/s/ Gary M. Klinger
Gary M. Klinger