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Co-Lead Class Counsel for Plaintiffs

[Additional counsel appear on signature page.]

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

| | |
|---|---|
| In re SOLARA MEDICAL SUPPLIES DATA BREACH LITIGATION<br><br>This Document Relates To:<br><br>ALL ACTIONS. | Case No. 3:19-cv-02284-H-KSC<br><br><u>CLASS ACTION</u><br><br>PLAINTIFFS' REPLY IN FURTHER SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND MOTION FOR ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS<br><br>Judge: Hon. Marilyn L. Huff<br>Date: September 12, 2022<br>Time: 10:30 a.m.<br>Courtroom: TBD |

Plaintiffs Juan Maldonado, Adam William Bickford, Jeffrey Harris, Alex Mercado, Thomas Wardrop, and Kristi Keally, the legal guardian of a minor with the initials M.K. ("Plaintiffs"), by and through their undersigned counsel, respectfully submit this reply in further support of Plaintiffs' Motion for Final Approval of Class Action Settlement (ECF No. 147), and Plaintiffs' Motion for Attorneys' Fees, Expenses, and Service Awards (ECF No. 148).

Plaintiffs are pleased to report that the deadline for Settlement Class Members to object to or opt-out of the proposed Settlement passed on August 22, 2022 (*see* ECF No. 146 at 17), and that ***no*** Settlement Class Members objected to the Settlement[1] or the fees, expenses, and service awards requested. Plaintiffs are also pleased to report that only three individuals, out of approximately 114,000

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[1] On August 6, 2022, one individual, William P. Garcia, submitted a brief letter to the Settlement Administrator "writing to object to the settlement as proposed by Solara Medical Supplies LLC[.]" *See* Letter from W. Garcia dated Aug. 6, 2022, attached to the Supplemental Declaration of Stuart A. Davidson in Support of Plaintiffs' Reply in Further Support of Motion for Final Approval of Class Action Settlement and Motion for Attorneys' Fees, Expenses, and Service Awards ("Davidson Declaration") as **Exhibit A**. Because this letter does not comply in any respect with an objector's obligations under the Notice, including the obligation to identify "the basis of your inclusion in the Settlement Class" and to provide "a list of all state or federal court cases in which you (and/or your lawyer, if represented by counsel) have objected to a proposed class action settlement," and was not filed with the Clerk of the Court, it is not a proper objection and may be disregarded. *See, e.g.*, *Chavez v. PVH Corp.*, No. 13-CV-01797-LHK, 2015 WL 9258144, at *3 (N.D. Cal. Dec. 18, 2015) (explaining that court may reject "procedurally improper" objections on that basis alone); *Moore v. Verizon Commc'ns Inc.*, No. C 09-1823 SBA, 2013 WL 4610764, at *12 (N.D. Cal. Aug. 28, 2013) (overruling objections that were submitted because these objections "fail[ed] to comply with the procedural requirements for objecting to the Settlement"). This boilerplate objection also failed to comply with Rule 23, which specifically requires that an objection "must state whether it applies only to the objector, to a specific subset of the class or to the entire class, and also state with specificity the grounds for the objection." Fed. R. Civ. P. 23(e)(5).

Settlement Class Members, have opted out of the Settlement Class. *See* Supplemental Declaration of Derek Smith Regarding Notice Procedures, ¶3, attached to the Davidson Declaration as **Exhibit B**. This lack of objections and extremely low opt-out rate are indicia of the fairness of both the Settlement and the requested fees, expenses, and service awards.[2]

In addition, Plaintiffs are pleased to report that, based on the claims received to date, 4,852, and assuming that Class Counsel are awarded their requested attorneys' fees and expenses, and Plaintiffs are awarded their requested service awards, Settlement Class Members who timely submitted valid claim forms to the

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[2] *See, e.g.*, *Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 577 (9th Cir. 2004) (affirming district court's approval of settlement where 45 of 90,000 class members objected to the settlement); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998) ("[T]he fact that the overwhelming majority of the class willingly approved the offer and stayed in the class presents at least some objective positive commentary as to its fairness."); *In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 320 (N.D. Cal. 2018) ("[O]nly 406 Settlement Class Members have opted out of the Settlement (about 0.0005% of the Class); *Van Lith v. iHeartMedia + Entm't, Inc.*, No. 1:16-cv-00066-SKO, 2017 WL 4340337, at *14 (E.D. Cal. Sept. 29, 2017) ("Indeed, '[i]t is established that the absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of a proposed class action settlement are favorable to the class members.'"); *Low v. Trump Univ., LLC*, 246 F. Supp. 3d 1295, 1304 (S.D. Cal. 2017) (one objection from 8,253 class members supports fairness, adequacy, and reasonableness of settlement*), aff'd*, 881 F.3d 1111 (9th Cir. 2018); *In re Linkedin User Privacy Litig.*, 309 F.R.D. 573, 589 (N.D. Cal. 2015) ("A low number of opt-outs and objections in comparison to class size is typically a factor that supports settlement approval."); *Cruz v. Sky Chefs, Inc.*, No. C-12-02705 DMR, 2014 WL 7247065, at *5 (N.D. Cal. Dec. 19, 2014) ("A court may appropriately infer that a class action settlement is fair, adequate, and reasonable when few class members object to it."); *Chun-Hoon v. McKee Foods Corp.*, 716 F. Supp. 2d 848, 852 (N.D. Cal. 2010) (approving class settlement with opt-out rate of 4.68% given that absence of negative reaction strongly supports settlement); *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1043 (N.D. Cal. 2008) ("The Court received objections from only 3 out of 57,630 potential Class Members who received the notice. By any standard, the lack of objection of the Class Members favors approval of the Settlement.").

Settlement Administrator will receive approximately $489.65 in cash from the Settlement – an amount well in excess of $100. *See id.*, ¶7.

Based on the foregoing, Plaintiffs respectfully request that the Court grant final approval to the Settlement and award Class Counsel attorneys' fees and expenses, and Plaintiffs' service awards, in the amounts requested.

DATED: August 29, 2022

ROBBINS GELLER RUDMAN
& DOWD LLP
STUART A. DAVIDSON
DOROTHY P. ANTULLIS
BRADLEY M. BEALL

*s/ Stuart A. Davidson*
STUART A. DAVIDSON

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Interim Co-Lead Counsel for Plaintiffs

[Additional counsel appear on signature page.]

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

| | |
|---|---|
| In re SOLARA MEDICAL SUPPLIES DATA BREACH LITIGATION | Case No. 3:19-cv-02284-H-KSC |
| | CLASS ACTION |
| This Document Relates To:<br><br>ALL ACTIONS. | SUPPLEMENTAL DECLARATION OF STUART A. DAVIDSON IN SUPPORT OF PLAINTIFFS' REPLY IN FURTHER SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND MOTION FOR ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS |
| | Judge: Hon. Marilyn L. Huff<br>Date: September 12, 2022<br>Time: 10:30 a.m.<br>Ctrm.: TBD |

I, Stuart A. Davidson, declare as follows:

1. I am an attorney duly licensed to practice before all of the courts of the States of Florida and Minnesota and am admitted *pro hac vice* before this Court in this action. I am a member of the law firm of Robbins Geller Rudman & Dowd LLP ("Robbins Geller"), and I am one of the Interim Co-Lead Plaintiffs' Counsel in this case. I have personal knowledge of the matters stated herein, and, if called upon, I could and would competently testify thereto.

2. I respectfully submit true and correct copies of the foregoing exhibits in connection with Plaintiffs' Reply in Further Support of Motion for Final Approval of Class Action Settlement and Motion for Attorneys' Fees, Expenses, and Service Awards:

| Exhibit No. | Document |
|---|---|
| EXHIBIT A | Letter from W. Garcia dated Aug. 6, 2022 |
| EXHIBIT B | Supplemental Declaration of Derek Smith Regarding Notice Procedures |

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 29th day of August, 2022, at Boca Raton, Florida.

*/s/ Stuart A. Davidson*
STUART A. DAVIDSON

# EXHIBIT INDEX TO THE SUPPLEMENTAL DECLARATION OF STUART A. DAVIDSON IN SUPPORT OF PLAINTIFFS' REPLY IN FURTHER SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND MOTION FOR ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS

# EXHIBIT A

August 6, 2022

To whom it may concern:

I am writing to object to the settlement as proposed by Solara Medical Supplies LLC "Solara"

Sincerely
William P. Garcia

William P. Garcia
1826 Burgundy St.
Schererville, IN
46375-1916

Claim ID 10045345

1826 Burgundy St.
Schererville IN
46375

S3A

CERTIFIED MAIL

7020 0090 0000 0710 1690

CAROL STREAM IL 60188
AUG 2022

UNITED STATES POSTAL SERVICE

1000 02940

U.S. POSTAGE PAID
FCM LETTER
SCHERERVILLE, IN
46375
AUG 13, 22
AMOUNT
$7.85
R2304M110402-05

Solara Data Breach Settlement Adm.
PO Box 43277
Providence, RI
02940-3277

Received
AUG 16 2022

02940-327777

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF THE RETURN ADDRESS, FOLD AT DOTTED LINE

# EXHIBIT B

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

| | |
|---|---|
| In re SOLARA MEDICAL SUPPLIES DATA BREACH LITIGATION | Case No. 3:19-cv-02284-H-KSC |
| | CLASS ACTION |
| This Document Relates To: ALL ACTIONS. | SUPPLEMENTAL DECLARATION OF DEREK SMITH REGARDING NOTICE PROCEDURES |

I, Derek Smith, declare as follows:

**1.** I am employed as a Director by Gilardi & Co. LLC ("Gilardi"), located at 1 McInnis Parkway, Suite 250, San Rafael, California 94903. Gilardi was appointed as the Settlement Administrator in this matter and is not a party to this action. I have personal knowledge of the facts set forth herein and, if called as a witness, could and would testify competently thereto.

**Claim Forms**

2. The postmark deadline for Class Members to file claims in this matter was August 8, 2022, and late-submitted claims were allowed through August 19, 2022. As of the date of this declaration, 4,852 Claim Forms have been filed, which represents approximately 4.84% of the possible Class Members who received direct Notice.

**Requests for Exclusion from Class**

3. The postmark deadline for Class Members to request to be excluded from the class was August 22, 2022. As of the date of this declaration, Gilardi has received three requests for exclusion. The requests for exclusion were submitted by Marylou Baerlin, Blake Roseberry, and Julia Pyne. True and correct copies of the requests are attached hereto as Exhibit 1, Exhibit 2, and Exhibit 3, respectively.

**Objections to the Settlement**

4. The postmark deadline for Class Members to object to the settlement was August 22, 2022. As of the date of this declaration, Gilardi has received one purported objection to the settlement, but the objection did not comply with the instructions for objecting.

**Administration Costs**

5. Gilardi has agreed to costs of $82,074.

**Per Claimant Recovery**

6. Gilardi has preliminarily calculated the Class Member settlement awards. These calculations are based on the assumptions that the gross settlement amount is $5,060,000.00, and, from that amount, deductions are made for: (a) requested attorneys' fees ($2,300,000.00); (b) requested attorneys' costs ($278,021.35); (c) requested named plaintiff awards ($24,000); and (d) administration costs ($82,074). The remaining amount ($2,375,904.65) (the "Net Settlement Fund") will be allocated pursuant to the terms of the settlement to those Class Members preliminarily approved for payment.

7. Pursuant to the terms of the Settlement Agreement and based on the 4,852 valid claims filed, the estimated per-claimant recovery is approximately $489.65. Should the Court-awarded fees or costs differ than those shown above or if the list of Class Members approved for payment and/or their class data changes, the estimated award allocation calculations will change accordingly.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 24th day of August 2022 at Petaluma, California.

DEREK SMITH

# EXHIBIT 1

15161 Ford Road
Apt. #114
Dearborn, Michigan 48126

Solara Data Breach
Settlement Administrator
P. O. Box 43277
Providence, RI 02940-3277

RE: Claim ID 10013242
PIN: 270516

To whom it may concern:

I am writing to exclude myself from the settlement in the class action lawsuit concerning a cyberattack against Solara Medical Supplies, LLC.

Thank you for your attention to this matter.

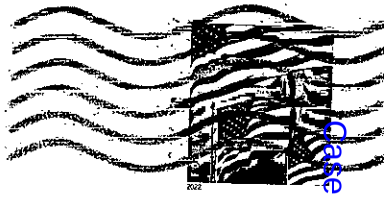
Yours truly,

Mary Lou Baerlin

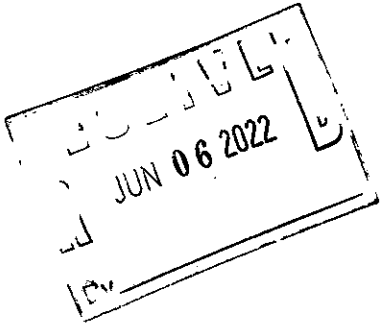
Mary Lou Baerlin

Mary Lou Baerlin
Apt 114
15161 Ford Rd
Dearborn, MI 48126-4693

METROPLEX MI 480
2 JUN 2022 PM 14 L



Solara Data Breach
Settlement Administrator
P. O. Box 43277
Providence, RI 02940-3277

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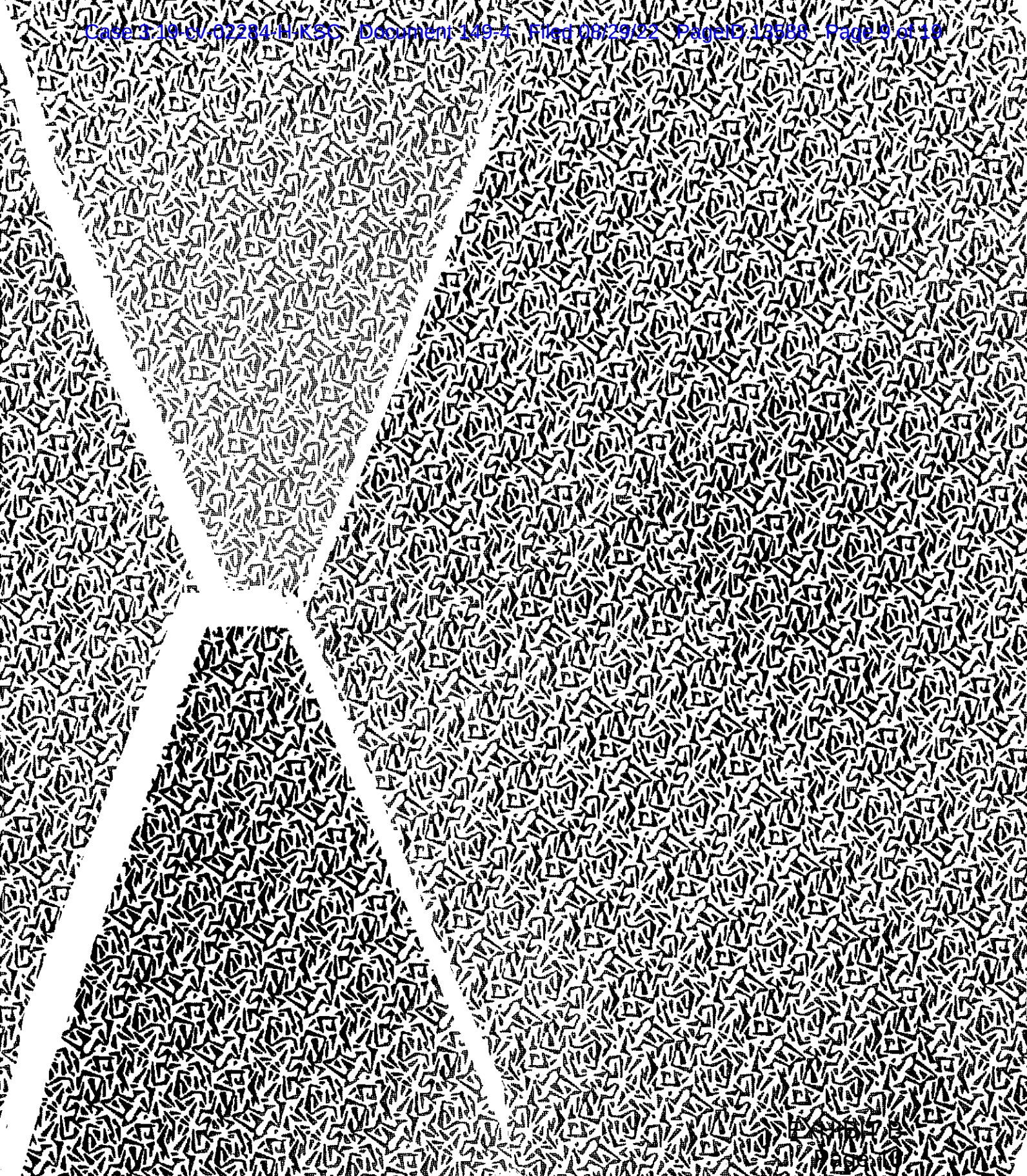

# EXHIBIT 2

25399 The Old Road Apt 10-206
Stevenson Ranch, CA 91381

June 18, 2022

Solara Data Breach Settlement Administrator
PO Box 43277
Providence, RI 02940-3277

In re Solara Data Breach Litigation – Case No. 3:19-cv-02284-H-KSC

To Whom It May Concern:

As an eligible Settlement Class Member due to my relationship with Solara Medical as a customer prior to June 2019 whose data was subjected to the data breach, I wish to exclude myself from the Settlement Class in In re Solara Data Breach Litigation.

If you have any questions, I can be reached at +1 (319) 210-3296.

Thank you,

Blake A. Roseberry

Blake A. Roseberry

Blake A. Roseberry
25399 The Old Road Apt 10-206
Stevenson Ranch, CA 91381

SANTA CLARITA CA 913
22 JUN 2022 PM 5 L

FOREVER 7 USA

JUN 27 2022

Solara Data Breach Settlement Administrator
PO Box 43277
Providence, RI 02940-3277

02940-327777-

# EXHIBIT 3

I, Julia Pyne, wish to be excluded from the settlement class. in the class action lawsuit concerning a cyberattack against Solara Medical Supplies, LLC, whereby potential compromise of personal identifying information ("PII") and protected health information ("PHI") has been claimed. I understand I will not receive money from the class settlement.

I further verify the following is true: My name, Julia Pyne, my claim ID for the settlement class case, 10091133-1, Pin, 8U1930, address, 516 Eckschtay ST, Novi, MI, 48374-1102.

Julia Pyne August 9, 2022

Julia Pyne

Julia Pyne
5911 Ecksntay St
Novi, MI 48374-1102

METROPLEX MI 480
10 AUG 2022 PM 6 L

★ USA ★ FOREVER ★

EXHIBIT B
Page 22

RECEIVED
AUG 15 2022
By

Solara Data Breach
Settlement Administrator
P.O. BOX 43277
Providence, RI 02940-3277

S3A

02940-327777

FSC
Envelope
MIX
FSC® C137131

THIS ENVELOPE IS RECYCLABLE AND MADE WITH 30% POST CONSUMER CONTENT