

JANE DOE, <i>et al.</i>)	
)	
Plaintiff,)	
)	Case No.: 37-2024-00006118 (Cal. Super. Ct.)
v.)	
)	
SAN DIEGO FERTILITY CENTER)	
MEDICAL GROUP, INC. d/b/a)	
SAN DIEGO FERTILITY CENTER)	
)	
Defendant.)	
)	
-----)	
)	
B.W. and JANE DOE, <i>et al.</i>)	
)	
Plaintiffs,)	
)	Case No.: 24CV0237 LL BLM (S.D. Cal.)
v.)	
)	
SAN DIEGO FERTILITY CENTER)	
MEDICAL GROUP, INC., and)	
IVY FERTILITY SERVICES, LLC.)	
)	
Defendants.)	

STIPULATION OF SETTLEMENT
AGREEMENT AND RELEASE

This Stipulation of Settlement Agreement and Release (this “Settlement Agreement”) is entered into between the B.W., B.B., B.A., and two Jane Doe Plaintiffs, personally and in their capacity as proposed class representatives in the two above captioned matters (collectively, the “Plaintiffs” or “Named Plaintiffs”), and Defendants San Diego Fertility Center Medical Group, Inc. (“SDFC”), and Ivy Fertility Services, LLC (individually, “Ivy,” and collectively with SDFC, the “Defendants”). The Named Plaintiffs and Defendants are collectively referred to as “the Parties.”

WHEREAS, on December 1, 2022, the U.S. Department of Health and Human Resources published a Bulletin, stating in part:

Tracking technologies are used to collect and analyze information about how users interact with regulated entities' websites or mobile applications ("apps"). For example, a regulated entity may engage a technology vendor to perform such analysis as part of the regulated entity's health care operations. The HIPAA Rules apply when the information that regulated entities collect through tracking technologies or disclose to tracking technology vendors includes protected health information (PHI). Some regulated entities may share sensitive information with tracking technology vendors and such sharing may involve unauthorized disclosures of PHI with such vendors. Regulated entities are not permitted to use tracking technologies in a manner that would result in impermissible disclosures⁸ of PHI to tracking technology vendors or any other violations of the HIPAA Rules. For example, disclosures of PHI to tracking technology vendors for marketing purposes, without individuals' HIPAA-compliant authorizations, would constitute impermissible disclosures.

WHEREAS, on July 20, 2023, Samuel Levine, Director of the Bureau of Consumer Protection at the Federal Trade Commission, and Melanie Fontes Rainer, Director of the Office for Civil Rights at the U.S. Department of Health and Human Services, sent letters to various companies with websites allegedly containing information related to health, stating in part:

The Office for Civil Rights (OCR) at the U.S. Department of Health and Human Services (HHS) and the Federal Trade Commission (FTC) are writing to draw your attention to serious privacy and security risks related to the use of online tracking technologies that may be present on your website or mobile application (app) and impermissibly disclosing consumers' sensitive personal health information to third parties.

Recent research, news reports, FTC enforcement actions, and an OCR bulletin have highlighted risks and concerns about the use of technologies, such as the Meta/Facebook pixel and Google Analytics, that can track a user's online activities. These tracking technologies gather identifiable information about users as they interact with a website or mobile app, often in ways which are not avoidable by and largely unknown to users.

Impermissible disclosures of an individual's personal health information to third parties may result in a wide range of harms to an individual or others. Such disclosures can reveal sensitive information including health conditions, diagnoses, medications, medical treatments, frequency of visits to health care professionals, where an individual seeks medical treatment, and more. In addition, impermissible disclosures of personal health information may result in identity theft, financial loss, discrimination, stigma, mental anguish, or other serious negative consequences to the reputation, health, or physical safety of the individual or to others.

...

The HIPAA Rules apply when the information that a regulated entity collects through tracking technologies or discloses to third parties (e.g., tracking technology vendors) includes PHI. HIPAA regulated entities are not permitted to use tracking technologies in a manner that would result in impermissible disclosures of PHI to third parties or any other violations of the HIPAA Rules.

WHEREAS, on July 25, 2023, the Federal Trade Commission posted a blog post on its website under the heading “Business Guidance,” stating in part:

Health information isn’t just about medications, procedures, and diagnoses. Rather, it’s anything that conveys information – or enables an inference – about a consumer’s health. Indeed, Premom, BetterHelp, GoodRx, and Flo Health make clear that the fact that a consumer is using a particular health-related app or website – one related to mental health or fertility, for example – or how they interact with that app (say, turning “pregnancy mode” on or off) may itself be health information.

...

Don’t use behind-the-scenes tracking technologies that contradict your privacy promises or otherwise harm consumers. In today’s surveillance economy, the consumer is often the product. Consumer data powers the advertising machine that goes right back to the consumer. But when companies use consumers’ sensitive health data for marketing and advertising purposes, such as by sending that data to marketing firms via tracking pixels on websites or software development kits on apps, watch out. BetterHelp, GoodRx, Premom, and Flo make clear that practices like that may run afoul the FTC Act if they violate privacy promises or if the company fails to get consumers’ affirmative express consent for the disclosure of sensitive health information.

WHEREAS, Defendants dispute the legal validity of OCR and FTC’s Bulletin, letters, and blog post;

WHEREAS, a federal court in Texas questioned OCR’s authority as to portions of the OCR guidance;

WHEREAS, Defendants maintain that even if the OCR and FTC’s interpretation of HIPAA were correct, that would not provide a basis for private litigation against companies such as Defendants;

WHEREAS, Plaintiffs maintain that their litigation against Defendants do not solely rely on the OCR, FTC, and HIPAA;

WHEREAS, lawsuits have been filed in state and federal courts around the United States against healthcare providers, insurance companies, and other defendants related to use of

tracking technologies on websites, including some lawsuits filed by Class Counsel in these Civil Actions.

WHEREAS, on January 25, 2024, Plaintiff Jane Doe filed a Complaint against Defendant SDFC, on behalf of herself and all others similarly situated, in the Superior Court of the State of California for the County of San Diego captioned *Doe v. San Diego Fertility Center Medical Group, Inc.*, No. 37-2024-00006118-CU-BC-CTL (Ca. Super. Ct.), (hereafter, the “State Action”) for damages and other relief, including equitable relief, for alleged negligence, invasion of privacy, breach of implied contract, unjust enrichment, breach of fiduciary duty, violation of the California Invasion of Privacy Act, violation of the California Confidentiality of Medical Information Act, violation of the Comprehensive Computer Data Access and Fraud Act, and violation of Cal. Bus. & Prof. Code §§ 17200, et. seq. concerning SDFC’s alleged sharing of personally identifying information regarding users of the website www.sdfertility.com in violation of SDFC’s Privacy Policy and the law. As outlined in Paragraphs 32, 158, and 159 of the State Action Complaint, Plaintiff Jane Doe brought the class action pursuant to Cal. Civ. Proc. Code § 382 on behalf of “[a]ll California citizens whose Private Information was disclosed by Defendant to third parties through the Meta Pixel and related technologies without authorization.”

WHEREAS, on February 5, 2024, Plaintiffs B.W. and Jane Doe filed a Complaint against Defendants, on behalf of themselves and all others similarly situated, in the United States District Court for the Southern District of California captioned *B.W. et al v. San Diego Fertility Center Medical Group, Inc. et al*, No. 3:24-cv-00237 (S.D. Cal.), (hereafter, the “Federal Action”) for damages and other relief, including equitable relief, for alleged intrusion upon seclusion, breach of implied contract, larceny and receipt of stolen property, and violations of the Electronics Communications Privacy Act, 18 U.S.C. § 2511(1), et seq., Cal. Pen. Code §§ 630, et seq., Cal. Civ. Code §§ 56, et seq., and the California Constitution, Article 1 § 1, concerning Defendants’ alleged sharing of personally identifying information regarding users of various websites owned,

operated by, or affiliated with Defendants (the “Web Properties”)¹ in violation of privacy policies and the law. As outlined in Paragraph 276 of the Federal Action Complaint, Plaintiffs B.W. and Jane Doe brought the class action “on behalf of themselves and on behalf of various classes of persons similarly situated, as defined below, pursuant to Rule 23(b)(2), 23(b)(3), and 23(c)(4) of the Federal Rules of Civil Procedure.”

WHEREAS, on July 1, 2024, Plaintiff in the State Action filed an Amended Complaint for damages and other relief, including equitable relief, for negligence, invasion of privacy, breach of implied contract, unjust enrichment, breach of fiduciary duty, violation of the California Invasion of Privacy Act, violation of the California Confidentiality of Medical Information Act, violation of the Comprehensive Computer Data Access and Fraud Act, and violation of Cal. Bus. & Prof. Code §§ 17200, et. seq. The allegations concerned SDFC’s alleged sharing of personally identifying information regarding users of the website www.sdfertility.com in violation of SDFC’s Privacy Policy and the law. As outlined in Paragraphs 37, 203, and 204 of the State Action Complaint, Plaintiff Jane Doe brought the class action pursuant to Cal. Civ. Proc. Code § 382 on behalf of “[a]ll California citizens whose Private Information was disclosed by Defendant to third parties through the Meta Pixel and related technologies without authorization.”

WHEREAS, Defendants have at all times denied (and continue to deny) liability for all claims, conduct, and issues alleged in or in any way related to the Civil Actions, and in particular deny that they breached any agreement, violated anyone’s privacy, fell short of duties they have regarding the Plaintiffs or the proposed Class, participated in any wiretapping, wrongly transmitted medical information or personally identifying information to third parties, exchanged stolen property, or received any unjust enrichment;

¹ The Web Properties include the websites, portals, billing platforms, and patient appointment webpages affiliated with Defendants, including but not limited to: <https://www.sdfertility.com>, <https://app.ivyfertility.com/contact-us/sdfc/scheduleconsultation>, <https://fertilitycentersoc.com/iui.html>, <https://www.reproductivepartners.com>, <https://pnwfertility.com/>, <https://www.fertilitymemphis.com/>, <https://www.idahofertility.com/>, <https://nevadafertility.com/>, <https://www.nvfertility.com/>, <https://utahfertility.com/>, <https://www.ivyfertility.com/>, and <https://www.vafertility.com>.

WHEREAS, Defendants have at all times denied that the proposed class meets the manageability requirements of either California Civil Procedure Code § 382 or Rule 23 of the Federal Rules of Civil Procedure;

WHEREAS, Defendants have at all times maintained that they have at all times complied with their Privacy Policy obligations and the law;

WHEREAS, the Parties have conducted written discovery, including the exchange of factual disclosures, records pursuant to requests for production, and verified responses to written interrogatories, and such discovery has enabled each party to understand and assess the detail and substance of their respective claims and defenses;

WHEREAS, on September 24, 2024, after a full day mediation session with the Honorable Judge Jay C. Gandhi (ret.), the Parties reached agreement on the material terms of a settlement resolving the Plaintiffs' and proposed Class's claims across both Civil Actions, which are now being memorialized in this Settlement Agreement;

WHEREAS, as part of this Settlement Agreement, the parties have agreed that Plaintiff in the State Action shall file a Second Amended Complaint in the State Action. The Second Amended Complaint shall be substantially similar to the Amended Complaint, filed on July 1, 2024, except it shall add Jane Doe No. 2, B.A., B.B., and B.W. Plaintiffs from the Federal Action as Named Plaintiffs, add Ivy Fertility Services, LLC as a Defendant, add Almeida Law Group LLC and Srourian Law Firm, P.C. as Class Counsel, add claims pursuant to California Penal Code 496(a) and (c), the Electronic Communications Privacy Act 18 U.S.C. § 2511(1), et seq., and California's Constitution, Article 1 § 1, and expand the allegations to address and the proposed Class to include all users of Defendants' Web Properties;

WHEREAS, the Parties are desirous of achieving a resolution of all claims and issues existing between the Parties;

WHEREAS, Class Counsel has concluded, after due investigation and after carefully considering the relevant circumstances, including, without limitation, the claims, the legal and factual defenses thereto, and the applicable law, that (i) it is in the best interests of the Class to

enter into this Agreement in order to avoid the uncertainties of litigation and to assure that the benefits reflected herein are obtained for the Class; and (ii) the Settlement set forth herein is fair, reasonable, and adequate and in the best interest of the Class.

NOW, THEREFORE, in consideration of the mutual promises and agreements hereinafter set forth, receipt of which is acknowledged, it is hereby stipulated and agreed for purposes of settlement only by and between the Parties that:

I. DEFINITIONS

The terms defined below shall have the meanings set forth in this Section wherever used in this Agreement and its exhibits, including the Notice (as defined in Section 1.16, below).

1.1 “Agreement” means this Stipulation of Settlement Agreement and Release and the terms outlined herein.

1.2 “Civil Actions” mean the Federal Action captioned *B.W. et al v. San Diego Fertility Center Medical Group, Inc. et al*, No. 3:24-cv-00237 (S.D. Cal.) and the State Action captioned *Doe v. San Diego Fertility Center Medical Group, Inc.*, No. 37-2024-00006118-CU-BC-CTL (Ca. Super. Ct.).

1.3 “Claim and Release Form” means the form agreed upon by the Parties and approved by the Court, that are to be completed by the Class member—along with supporting documentation described in the Notice—in order to make a claim under this Settlement. Such form accompanying the Notice (as defined in Section 1.16, below) is attached hereto as Exhibit B.

1.4 “Claim Deadline” means the date that occurs sixty (60) days after the date Notice is mailed to the Class, which is the date by which Class members must return a completed Claim and Release Form. If this date is on a Saturday, Sunday, or federally recognized holiday, the Claim Deadline shall be the following business day.

1.5 “Class Counsel” means Almeida Law Group, Cohen & Malad, LLP, Srourian Law Firm, P.C., Stranch, Jennings, & Garvey, PLLC, and Strauss Borelli, PLLC.

1.6 “Class Representative” means the five named individuals who filed the above-captioned matters.

1.7 “Common Settlement Common Fund” means the \$850,000 cash payment to be made by Defendant into a common fund, which is the total amount of settlement money that can possibly be paid by Defendants under this Settlement Agreement, including but not limited to: (a) payments to Class members, (b) any Court approved attorneys’ fees, expenses, and costs as set forth in Section 4.1; (c) payment for the Third Party Administrator’s costs and expenses; and (d) the service awards to the Named Plaintiffs as set forth in Section 5.4.

1.8 The “Class” is defined as persons located with the United States who used Defendants’ Web Properties from January 2020 through the present.

1.9 “Court” means the Superior Court for the Court of California for the County of San Diego.

1.10 “Covered Period” means the time frames for compensation set forth under the definitions for the Class Members.

1.11 “Defense Counsel” means Dechert, LLP.

1.12 “Fairness Hearing” means the hearing set by the Court in the Preliminary Approval Order whereby the members of the Class are permitted to present any objections to this Settlement Agreement.

1.13 “Final Approval Date” means the date the Court enters its Final Approval Order (as defined in Section 1.14, below).

1.14 “Final Approval Order” means any order issued by the Court after the Fairness Hearing which grants final approval of the Settlement, authorizes the distribution of payments to Class Counsel, Plaintiff, Participating Class Members (as defined in Section 1.17, below), and the Third Party Administrator (as defined in Section 1.25, below), under the terms forth herein, and dismisses with prejudice the Class members’ Released Claims against the Released Parties.

1.15 “Net Settlement Fund” is the amount that represents the Common Settlement Fund after deduction of: (a) Court approved attorneys’ fees, expenses, and costs as set forth in

Section 4; (b) payment for the Third-Party Administrator's costs and expenses; and (c) the service award to Plaintiffs as set forth in Section 5.4.

1.16 "Notice" means the notice sent to the Class members, and the related Claim and Release Form, all attached hereto as Exhibits A and B, which have been approved by the Parties and are subject to the approval of the Court.

1.17 "Participating Class Member" means a Class member who returns a Claim and Release Form—along with all required documentation set forth in the Notice—by the Claim Deadline.

1.18 "Payment Deadline" means the date that falls sixty (60) days after the Court enters its Final Approval Order.

1.19 "Plan of Allocation" is the method by which the amount owed under this Settlement is determined for each Participating Class Member—the description of which has been set forth in Section 5.1.

1.20 "Preliminary Approval Date" means the date the Court enters the Preliminary Approval Order (as defined in Section 1.21, below).

1.21 "Preliminary Approval Order" means any order issued by the Court granting conditional class certification under California Civil Procedure Code § 382 on behalf of the Class set forth in the Second Amended Complaint; and which grants preliminary approval of the Settlement; and which authorizes the distribution of the Notice attached hereto as Exhibit A to the Class members; and which preliminarily approves the allocation of the Common Settlement Fund as set forth herein; and which sets a date for a final Fairness Hearing before the Court (the Parties' courtesy copy to be provided to the Court is attached hereto as Exhibit C).

1.22 "Released Claims" means all actions, claims, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, complaints, charges, commissions, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, liabilities, obligations, complaints, rights, and demands whatsoever, at law, admiralty or in equity, whether known or unknown, suspected or unsuspected, against any Defendant or

any Released Party, under federal law or the law of any state (from any of the 50 states, District of Columbia, and United States territories), including those relating in any way to (i) Defendants' Web Properties; (ii) the collection, use, storage, transmission, disclosure, or sharing of any data from, regarding, belonging, or relating to users of Defendants' Web Properties; and (iii) any agreements, contracts, disclosures, non-disclosures, obligations, acts, or omissions regarding the collection, use, storage, transmission, disclosure, or sharing of such data to the maximum extent allowed by law. Such data includes, but is not limited to, user inputs, metadata, device identifiers, app events and other analytics data, location data, health data, personally identifying information, and biometric data. Such claims include, but are not limited to, all claims that have been brought, are, or could have been brought in the Civil Actions, including any potential claims arising out of or related to Defendants' alleged wrongful sharing to third parties. For the avoidance of doubt, this includes, but is not limited to, all claims arising out of or relating to any of Defendants' practices, acts, or omissions alleged, described, or implied by the Civil Action Complaints.

1.23 "Released Parties" means all persons or entities involved in the creation, publication, development, operation, or distribution of Defendants' Web Properties, including San Diego Fertility Center Medical Group, Inc., Ivy Fertility Services, LLC, and their predecessors, successors, and present, future and former affiliates, present affiliates, including the clinics identified in the Civil Action Complaints, parents, subsidiaries, divisions, insurers, reinsurers, officers, directors, board members, principals, attorneys, agents, representatives, employees, and assigns, including, without limitation, any investors, trusts, or other similar or affiliated entities and all persons acting by, through, under, or in concert with any of them, including any party that was or could have been named as a defendant in either Civil Action.

1.24 "Settlement Agreement," the "Agreement," or the "Settlement" means this Stipulation of Settlement Agreement and Release and the terms outlined therein.

1.25 "Third Party Administrator" ("TPA") means the court-appointed Third Party Administrator, who will be responsible for mailing the Notices, collecting the Claim and Release

Forms, establishing a trust account for the purposes of collecting funds from Defendants to effectuate the terms of this Settlement, making payments to the Participating Class Members under the terms of this Agreement, and making payments to Class Counsel under the terms of this Agreement. The Parties, subject to Court approval, have agreed to use EisnerAmper, a company experienced in administering class action claims generally and specifically those of the type provided for here, as Third Party Administrator in this matter.

II. RECITALS

2.1 SDFC is a privately held California corporation established in 1996 with its principal place of business and corporate headquarters at 11425 El Camino Real, San Diego, California in San Diego County.

2.2 Ivy Fertility is a Delaware corporation with its principal place of business and corporate headquarters at 16870 West Bernardo Drive, Suite 120, San Diego, California in San Diego County.

2.3 Class Counsel conducted a thorough investigation into the facts of the Civil Actions, including the discovery of documents concerning operating agreements, privacy policies, and data on website usage. Based on their investigation and evaluation, the Named Plaintiffs and Class Counsel are of the opinion that the terms set forth in this Settlement Agreement are fair, reasonable, and adequate and in the best interests of the Class in light of all known facts and circumstances, including the risk presented by the defenses asserted by Defendants, the risk of not obtaining certification, the risks of decertification, the risk of summary judgment, and the delays associated with the litigation, trial and an appeal process, and ultimately the risks of collecting any awards against Defendants. Defendants are aware of the opposing risks of each of these situations, and the potential exposure it faces if unsuccessful in defeating class certification, and ultimately losing at trial and on appeal.

2.4 It is the desire of the Parties to fully, finally, and forever settle, compromise, and discharge all disputes and claims arising from or related to the Civil Actions and all similar facts, allegations, transactions, or occurrences.

2.5 It is the intention of the Parties that this Agreement shall constitute a full and complete settlement and release by the Plaintiffs and Class members of the Civil Actions and the Released Claims against the Released Parties.

2.6 Defendants deny any liability or wrongdoing of any kind associated with the claims alleged in the Civil Actions. This Agreement is a compromise entered into by Defendants solely for the purpose of avoiding the time and expense of litigation.

2.7 This Agreement is a compromise and shall not be construed as an admission of liability at any time or for any purpose, under any circumstances, by the Parties or the Released Parties. The Parties further acknowledge and agree that neither this Agreement nor the Settlement shall be used to suggest an admission of liability in any dispute that any of the Parties may have now or in the future with respect to any person or entity. Neither this Agreement, anything in it, nor any part of the negotiations that occurred in connection with the creation of this Settlement, nor any act performed or document executed pursuant to or in furtherance of the Settlement Agreement or the settlement, shall constitute evidence with respect to any issue or dispute in any lawsuit, legal proceeding, or administrative proceeding, including but not limited to the certifiability of any putative class action, except for legal proceedings concerning the enforcement or interpretation of this Agreement.

III. OBTAINING LEAVE TO AMEND AND CONDITIONAL CLASS CERTIFICATION

3.1 As a material term of this Settlement, within five (5) days of the Parties executing this Agreement, Plaintiffs shall file—unopposed by Defendants—a motion for leave to file a Second Amended Complaint in the State Action.

3.2 This Second Amended Complaint in the State Action shall be substantially similar to the Amended Complaint, filed on July 1, 2024 in the State Action, except it shall add Jane Doe No. 2, B.B., B.A., and B.W. Plaintiffs from the Federal Action as Named Plaintiffs, add Ivy Fertility Services, LLC as a Defendant, add Almeida Law Group LLC and Srourian Law Firm, P.C. as Class Counsel, add claims pursuant to California Penal Code 496(a) and (c), the

Electronic Communications Privacy Act 18 U.S.C. § 2511(1), et seq., and California's Constitution, Article 1 § 1, and expand the allegations to address and the proposed Class to include all users of Defendants' Web Properties.

3.3 The Court's granting of such leave to file this Second Amended Complaint is a material term of this Settlement, and the Parties' failure to remedy any issues raised by the Court in its denial to grant such leave shall void this Agreement in its entirety.

3.4 As a material term of this Settlement, when filing a motion seeking an order granting preliminary approval of this Settlement, Plaintiffs shall also move to have the Court grant conditional class certification on behalf of the Class—unopposed by Defendants after review and approval of the Motion—in order to effectuate the terms and conditions of this Agreement. This Motion will request that Named Plaintiffs be Class Representatives and Almeida Law Group, Cohen & Malad, LLP, Srourian Law Firm, P.C., Stranch, Jennings, & Garvey, PLLC, and Strauss Borelli, PLLC be Class Counsel. The Court's granting of such conditional certification is a material term of this Settlement. If the Court denies class certification, or any appellate court reverses class certification, and the Parties fail to remedy any issues raised by such court so as to make the class certifiable, this Agreement shall be void in its entirety. If this Agreement becomes null or void under any circumstances, the conditional class certification obtained by the Plaintiffs for the purposes of effectuating the terms of this Settlement shall also become null and void.

3.5 As a material term of this Settlement, within five (5) days of the Parties executing this Agreement, Plaintiffs in the Federal Action shall file a motion to dismiss the Federal Action, which Defendants will join.

IV. ATTORNEYS' FEES, LITIGATION COSTS, AND SETTLEMENT ADMINISTRATION COSTS

4.1 Class Counsel shall request the Court to approve an award of attorneys' fees not to exceed one third (or \$283,333.33) of the Settlement Fund plus expenses and costs incurred by Class Counsel in the prosecution of Plaintiffs claims in this Civil Actions. In Plaintiffs' motion

for approval of the attorneys' fees, costs, and expenses regarding this Settlement, Plaintiffs will move the Court to require payment of the fees, expenses, and costs to Class Counsel within twenty-one (21) days of the later of: (a) the Final Approval Date, or (b) receipt by the TPA of taxpayer identification numbers via executed W-9 forms from Class Counsel. Defendants will not oppose the Plaintiffs' motion for approval of attorneys' fees, expenses and costs as represented herein. Any and all taxes relating to the payments described in this paragraph shall be the sole responsibility of Class Counsel. Class Counsel agrees to indemnify and hold harmless Defendants and the Released Parties for any taxes due or owing by Class Counsel, Plaintiffs, and Class Members on any payments hereunder. Payment for the attorneys' fees, costs, and expenses outlined herein shall come from the Common Settlement Fund.

4.2 Payment for the services provided by the TPA set forth in this Agreement shall come from the Common Settlement Fund.

4.3 Except for the fees, costs, and other expenses expressly set forth in this Section 4, the Parties shall bear responsibility for their own fees, costs, and expenses incurred by them or arising out of the litigation associated with this Civil Action and will not seek reimbursement thereof from any other party to this Agreement or the Released Parties.

4.4 Class Counsel represent and warrant that other than Class Counsel, there are no persons (natural or legal) having any interest in any award of attorneys' fees, expenses or litigation costs in connection with this Civil Actions. Class Counsel agree to indemnify and hold Defendants harmless as to (a) breach of the representations and warranties contained in this section; and (b) any claims by other persons or entities against Defendants (or any of them) for such an award of attorneys' fees and/or litigation costs.

4.5 Class Counsel represent and warrant that they are not aware of any current client with any claim against Defendants or any of the Released Parties that has, as of the date of the Agreement, not been filed and served upon Defendants.

4.6 All dollar amounts in this Agreement are in United States dollars (USD).

V. ALLOCATION OF THE COMMON SETTLEMENT FUND

5.1 The allocated payment to each Participating Class Member who submits a claim shall be a pro-rated portion of the Net Settlement Fund determined by dividing the Net Settlement Fund by the number of Participating Class Members who submit valid claims, rounding to the nearest cent and in such a direction that the total of all payments does not exceed the Net Settlement Fund.

5.2 To be eligible for payment, Participating Class Members must certify that they visited a website created, owned, maintained, or distributed by Defendants, including but not limited to Defendants' Web Properties, between January 1, 2016 and the present.

5.3 To be eligible for payment, Participating Class Members must further certify that:

(a) they have read and understand the contents of the Notice and this Claim Form, including the Releases provided for in the Settlement and the terms of the Plan of Allocation;

(b) they are member of the Class, as defined in the Notice, and not excluded by definition from the Class as set forth in the Notice;

(c) they have not submitted a request for exclusion from the Class;

(d) they have not submitted any other Claim covering the same facts alleged in the State Action or Federal Action;

(e) they are subject to the jurisdiction of the Court with respect to this Claim and for purposes of enforcing the Releases set forth herein;

(f) they agree to furnish such additional information with respect to this Claim Form as Lead Counsel, the Claims Administrator, or the Court may require;

(g) they waive the right to trial by jury, to the extent it exists, and agree to the determination by the Court of the validity or amount of this Claim, and waive any right of appeal or review with respect to such determination;

(h) they acknowledge that they are bound by and subject to the terms of any judgment(s) that may be entered in the Action; and

(i) all information they provided on their claim form is true, correct, and complete, and that the documents they submit therewith are true and correct copies of what they purport to be.

5.4 For their service to the Class, and in recognition of the benefit created, each of the five Named Plaintiffs will move the Court for an order to receive a service award in the amount of \$2,500.00. This amount shall be paid by the Payment Deadline and shall be in addition to any payment made to Plaintiffs pursuant to Section 5.1 and will be administered from the Common Settlement Fund. Any and all taxes relating to such payments shall be the sole responsibility of Plaintiffs. Plaintiffs agree to indemnify and hold harmless Defendants and the Released Parties for any taxes due or owing by Plaintiffs on such service payment.

5.5 Plaintiffs' service award shall be in addition to any payment made to Plaintiffs pursuant to Section 5.1.

VI. NOTICE TO THE CLASS MEMBERS & RIGHT TO OBJECT

6.1 Within twenty-one (21) days of the Court's entering the Preliminary Approval Date, the TPA shall mail notice to all persons who became new patients of SDFC and the other nine fertility clinics associated with the Web Properties from January 1, 2020 through the Preliminary Approval Date for whom a valid mailing address is available. The Notice shall be in a format similar to Exhibits A and B attached hereto and shall include an ability for recipients to process their claims and submit their Claim and Release Form via a website created by the TPA for processing such claims. The Parties will work with the TPA on an agreeable formatting regarding the mailed notice and related website consistent with the terms and requirements set forth on Exhibits A and B.

6.2 The Notice attached as Exhibit A will explain the nature of this Civil Action and how each Class members' share was calculated based on the Plan of Allocation and will provide an opportunity for the Class member to opt-out of this Settlement so that they can separately pursue their claims, if any, against Defendants if they choose. It will also inform the Class member of the Released Claims against the Released Parties. The Notice Class members will

also inform them of the date of the Fairness Hearing and the process for objecting to the Settlement.

6.3 Each Notice shall also provide Class members Class Counsel's contact information and a tollfree number to obtain more information regarding the Notice and Settlement (said number to be set up and staffed by the TPA). The TPA shall also make available a complete copy of this Agreement on the website established to administer these claims.

6.4 The TPA shall inform Class Counsel and Defense Counsel of the date the Notice was sent to the Class.

VII. CLAIM, FUNDING PROCESS, & NONPARTICIATION

7.1 A Class member's Claim and Release Form must be post-marked, or returned via facsimile or e-mail, by the Claim Deadline. No payment shall be made for Claims submitted after the Claim Deadline. Upon request, the TPA shall provide to Class Counsel and Defense Counsel the executed Claim and Release Forms and supporting documents (including forms where any such person "opts-out" of the Settlement) for any Participating Class Member and/or an Excel spreadsheet reflecting the gross payout from the Net Settlement Fund for each Participating Class Member.

7.2 Any Class member's objection to the Settlement must be post-marked, or returned via facsimile or e-mail, by the Claim Deadline to the TPA. The TPA shall provide Class Counsel and Defense Counsel a copy of any objection upon its receipt per the requirements set forth in the Notice, and Class Counsel shall timely file said objections with the Court.

7.3 Within seven (7) days after Final Approval, and consistent with the Court's Final Approval Order, the TPA shall inform the Parties of the payment owed to the TPA for its costs associated with processing the Notice and payments set forth in this Settlement Agreement. This sum shall come from the Common Settlement Fund.

7.4 The TPA shall make payments to the Participating Class Members by the Payment Deadline. The face of each check sent to Participating Class Members, or bolded

language in a notice enclosed with each check, shall clearly state that the check must be cashed within one-hundred and twenty (120) calendar days from the date the check was issued.

7.5 Participating Class Members shall have one-hundred and twenty (120) calendar days from the date the settlement checks are mailed to them by the TPA to cash or otherwise negotiate their settlement checks. If any such Participating Class Member does not cash or otherwise negotiate either check within that 120-day period, such checks will be void and a stop-pay notice will be placed on such uncashed or unnegotiated checks. In such event, those Participating Class Members will be deemed to have waived irrevocably any right in or claim to settlement funds, and any such funds shall be allocated to the agreed-upon *cy pres* recipient. Such Participating Class Members who returned a Claim and Release Form indicating their desire to participate in the Settlement, but did not cash or otherwise negotiate either check, will nevertheless be bound by this Agreement and the Release provisions contained herein.

7.6 Class members who return a Claim and Release Form indicating their desire to not participate in the Settlement will be deemed to have waived irrevocably any right in or claim to any funds under this Settlement but will not be deemed to have waived their right to assert any of the Released Claims against any of the Released Parties in a separate legal proceeding if they so choose.

7.7 Class members who do not return a Claim and Release Form, or fail to timely return a Claim and Release Form by the Claim Deadline, will not receive any portion of the Net Settlement Fund and will be deemed to have waived irrevocably any right in or claim to any funds under this Settlement.

VIII. RELEASES BY CLASS MEMBERS AND COVENANT NOT TO SUE

8.1 By operation of this Agreement and except as to such rights or claims as may be created by this Agreement or those non-waivable by law, Plaintiffs, and their respective heirs, personal representatives, ancestors, beneficiaries, designees, legatees, executors, administrators, successors-in-interest, immediate family, and assigns hereby irrevocably and unconditionally forever and fully releases and discharges Defendants and the Released Parties for the Released

Claims they individually or collectively ever had, may now have or hereafter can, shall or may have .

8.2 By operation of this Agreement and except as to such rights or claims as may be created by this Agreement or those non-waivable by law, the Participating Class Members, and their respective heirs, personal representatives, ancestors, beneficiaries, designees, legatees, executors, administrators, successors-in-interest, immediate family, and assigns hereby irrevocably and unconditionally forever and fully releases and discharges Defendants and the Released Parties, individually and collectively, for, the Released Claims they ever had, may now have or hereafter can, shall or may have.

8.3 By operation of this Agreement and except as to such rights or claims as may be created by this Agreement or those non-waivable by law, Class members from all states and territories of the United States who do not return a Claim and Release Form, or fail to timely return a Claim and Release Form by the Claim Deadline, and their respective heirs, beneficiaries, designees, legatees, executors, administrators, successors-in-interest, and assigns hereby irrevocably and unconditionally forever and fully release and discharge Defendants and the Released Parties, individually and collectively, for the Released Claims they ever had, may now have or hereafter can, shall or may have.

8.4 By operation of this Agreement and except as to such rights or claims as may be created by this Agreement or those non-waivable by law, Plaintiffs, Participating Class Members, and their respective heirs, beneficiaries, immediate family, personal representatives, ancestors, designees, legatees, executors, administrators, successors-in-interest, and assigns hereby absolutely, unconditionally and irrevocably, covenant and agree that they will not sue (at law, in equity, in any regulatory proceeding or otherwise) Defendants or any other Released Party on the basis of or in connection with any Released Claim.

IX. NON-ADMISSION

9.1 Defendants expressly deny any wrongdoing, including but not limited to alleged wrongdoing associated with the claims in the Civil Actions, and make no admission of liability.

Defendants maintain that they have complied with applicable federal, state, and local laws at all times. It is expressly understood and agreed by the Parties that this Agreement is being entered into by Defendants solely for the purpose of avoiding the cost and disruption of ongoing litigation and defending any claims that have been or could be asserted in this Civil Actions. Nothing in this Agreement, the settlement proposals exchanged by the Parties, or any motions filed or orders entered pursuant to this Agreement, may be construed or deemed as an admission by Defendants of any liability, culpability, negligence, or wrongdoing, and this Agreement, including its provisions, its execution, and implementation, including any motions filed or orders entered, shall not in any respect be construed as offered or deemed admissible as evidence, or referred to in any arbitration or legal proceeding for any purpose, except in an action or proceeding to approve, interpret, or enforce this Agreement.

9.2 In the event the Court does not approve this Agreement, the Parties agree this Agreement is not meant to be, and will not be, construed as an admission that Defendants are liable for damages in the Civil Actions or any other litigation or proceeding. Further, in the event the Court does not approve this Agreement, Defendants and the Released Parties reserve the right to deny they engaged in activity that would warrant any damages.

9.3 This Agreement relates to the certification of a class for settlement purposes only. The Parties have not made, nor is any court required to make, any evaluation or finding of manageability of the Class within the meaning of California Civil Procedure Code § 382 or Federal Rule of Civil Procedure 23.

9.4 In the event that the Court does not approve this Agreement (or any appellate court reverses approval of this Agreement or certification of the Class), the Parties agree that Defendants reserve the right to contest certification of the Class. Further, nothing in this Agreement, nor information exchanged solely in support of this agreement or within settlement negotiations, shall be utilized (1) to prosecute or defend against the claims or (2) in support of or opposition to any motion to decertify a class in in the Civil Actions or any other litigation against Defendants or any of the Released Parties.

X. DUTIES OF THE PARTIES TO OBTAIN COURT APPROVAL

10.1 In connection with seeking Preliminary Approval by the Court of the Settlement, and consistent with any direction provided by the Court, Class Counsel and Defense Counsel will submit a proposed Order for the Court's review and consideration granting class certification; preliminarily approving the Agreement; adjudging the terms thereof to be fair, reasonable and adequate; and directing consummation of its terms and provisions regarding Notice to the Class.

10.2 In connection with seeking Final Approval by the Court of the Settlement, and consistent with any direction provided by the Court, Class Counsel and Defense Counsel will submit a proposed Order for the Court's review and consideration granting final approval to the Agreement; adjudging the terms thereof to be fair, reasonable and adequate; directing consummation of its terms and provisions; dismissing the Civil Actions on the merits and with prejudice and permanently bar all Class members—with the exception of this who opt-out as addressed in Section 6.2 above—from prosecuting against any Released Parties any of the Released Claims; and for the Court to retain jurisdiction to enforce the terms of the Agreement.

XI. PARTIES' AUTHORITY

11.1 The signatories hereby represent that they are fully authorized to enter into this Agreement and to bind the Parties hereto to the terms and conditions hereof.

11.2 The Parties hereby mutually represent and warrant to each other that they have not assigned, transferred or otherwise conveyed to any person or entity any actions, causes of action, etc. against the other.

11.3 All of the Parties acknowledge that they have been represented by competent, experienced counsel throughout the litigation of the Civil Actions, including all negotiations, which preceded the execution of this Agreement, and this Agreement is made with the consent and advice of Class Counsel and Defense Counsel, who have jointly prepared this Agreement.

XII. MUTUAL FULL COOPERATION

12.1 The Parties agree to use their best efforts and to fully cooperate with each other to accomplish the terms of this Agreement, including but not limited to, execution of such documents, and to take such other action as may reasonably be necessary to implement and effectuate the terms of this Agreement.

XIII. SETTLEMENT OF DISPUTES

13.1 All disputes relating to this Agreement and its implementation shall be within the continuing jurisdiction of the Court over the terms and conditions of this Agreement, until all payments and obligations contemplated by the Agreement have been fully carried out.

XIV. NOTICES

14.1 Unless otherwise specifically provided herein, all notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of the third business day after mailing by United States registered or certified mail, return receipt requested, addressed as follows:

To Named Plaintiffs or any other Class Member:

Lynn A. Toops
COHEN & MALAD, LLP
One Indiana Square, Suite 1400
Indianapolis, Indiana 46204
(317) 636-6481
(317) 636-2593 (facsimile)
ltoops@cohenandmalad.com

J. Gerard Stranch, IV
STRANCH, JENNINGS & GARVEY, PLLC
223 Rosa L. Parks Avenue, Suite 200
Nashville, Tennessee 37203
(615) 254-8801
gstranch@stranchlaw.com
amize@stranchlaw.com

Matthew J. Langley (SBN 342846)
ALMEIDA LAW GROUP LLC
849 W. Webster Avenue
Chicago, Illinois 60614

t: 312-576-3024
matt@almeidalawgroup.com

To Defendants:

Brenda R. Sharton
DECHERT LLP
One International Place, 40th Floor
100 Oliver Street
Boston, MA 02110-2605
Telephone: (617) 728-7100
Facsimile: (617) 275-8374
Brenda.Sharton@dechert.com

Benjamin M. Sadun
DECHERT LLP
US Bank Tower
633 West 5th Street, Suite 4900
Los Angeles, CA 90071-2032
Telephone: (213) 808-5700
Facsimile: (213) 808-5760
Benjamin.Sadun@dechert.com

Theodore E. Yale
DECHERT LLP
Cira Centre
2929 Arch Street
Philadelphia, PA 19104-2808
Telephone: (215) 994 2455
Facsimile: (215) 655-2455
theodore.yale@dechert.com

XV. AMENDMENTS/MODIFICATION

15.1 No waiver, modification, or amendment of the terms of this Agreement and/or its attachments shall be valid or binding unless in writing, signed by and on behalf of all of the Parties, and then only to the extent set forth in such written waivers, modifications, or amendments, and approved by the Court.

XVI. ENTIRE AGREEMENT

16.1 This Agreement, its attachments, constitute the entire agreement between the Parties concerning the subject matter hereof. No extrinsic oral or written representations or

terms shall modify, vary or contradict the terms of this Agreement. In the event of any conflict between this Agreement and any other Settlement-related document, the Parties intend that this Agreement shall be controlling.

XVII. CONTINUING JURISDICTION

17.1 The Parties request that the Court retain continuity and exclusive jurisdiction over the Parties for the purposes of the administration and enforcement of this Agreement. However, approval of the Agreement will not depend upon the Court granting this request, and the fact that the Court declines to exercise such jurisdiction will not impact the enforceability of this Agreement.

XVIII. COUNTERPARTS

18.1 This Agreement may be executed in counterparts, and when each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Agreement, which shall be binding upon and effective as to all Parties.

XIX. NO THIRD-PARTY BENEFICIARIES

19.1 Except for Released Parties, this Agreement shall not be construed to create rights in, or to grant remedies to, or to delegate any duty, obligation, or undertaking established herein to any third party as a beneficiary of this Agreement.

XX. BINDING AGREEMENT

20.1 This Agreement shall be binding upon, and inure to the benefit of, the Parties and their affiliates, agents, employees, beneficiaries, heirs, executors, administrators, successors, and assigns.

XXI. VOIDING THE AGREEMENT

21.1 In the event this Agreement, or any amended version agreed upon by the Parties does not obtain judicial approval for any reason, this Agreement shall be null and void in its entirety, unless expressly agreed in writing by all Parties. If this Agreement becomes void for

any reason, including failure to obtain judicial approval, Defendants reserve all right to litigate and oppose Plaintiffs' claims and to oppose class certification.

XXII. NON-DISPARAGEMENT

22.1 Except as provided for in Section 3, Plaintiffs and Class Counsel agree not to make or release, directly or indirectly, whether in such party's own name or in any alias or pseudonym, any statement or communication that is intended, or reasonably expected, to harm the reputation, goodwill, business, business relationships, prospects or operations of any of the Released Parties in relation to the conduct alleged in the State Action or Federal Action, including the use of third-party analytics tools on Defendants' Web Properties. The statements and communications barred by this paragraph shall include, but are not limited to, statements made to or through newspapers, magazines, television, radio, internet, social media, or any other media whether national, local or international. Nothing herein shall be interpreted to require Class Counsel to violate their ethical obligations to any current or future clients.

XXIII. GOVERNING LAW

23.1 This Agreement, and the exhibits hereto, shall be considered to have been negotiated, executed, and delivered, and to have been wholly performed in the State of California, and the rights and obligations of the Parties shall be construed and enforced in accordance with, and governed by, the substantive laws of the State of California without regard to that state's choice of law principles.

XXIV. PRIVACY OF DOCUMENTS AND INFORMATION

24.1 All agreements made, and orders entered during the course of the Civil Actions relating to the confidentiality of information and documents shall survive this Agreement.

24.2 Plaintiffs and Class Counsel agree that they will not disclose to any third parties, or use for any purpose, documents and information obtained in the course of the litigation, including information exchanged pursuant to settlement discussions, except that this Section shall not apply in any action to enforce or interpret the terms of this Agreement, and also shall not apply to the extent that any party is required by subpoena or other legal process to disclose

this information (in which event, the Party receiving any such subpoena, order, or other legal process shall give written notice to the other Party pursuant to the provisions of Section 14 at least seven (7) days prior to responding). The terms of the Agreed Confidentiality Order, as approved by the Court, shall continue to remain in full force and effect, notwithstanding anything to the contrary in this Agreement.

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement
as of the date indicated below:

Dated: January 8, 2025
_____, 2024

By: 
LYNN A. TOOPS*
COHEN & MALAD, LLP
ONE INDIANA SQUARE, SUITE 1400
INDIANAPOLIS, INDIANA 46204
(317) 636-6481
(317) 636-2593 (FACSIMILE)
LTOOPS@COHENANDMALAD.COM


Dated: January 8, 2025
_____, 2024

By: 
J. GERARD STRANCH, IV*
STRANCH, JENNINGS & GARVEY, PLLC
223 ROSA L. PARKS AVENUE, SUITE 200
NASHVILLE, TENNESSEE 37203
(615) 254-8801
GSTRANCH@STRANCHLAW.COM
AMIZE@STRANCHLAW.COM

Dated: December 31, 2024

By: 
MATTHEW J. LANGLEY
ALMEIDA LAW GROUP LLC
849 W. WEBSTER AVENUE
CHICAGO, ILLINOIS 60614
T: 312-576-3024
MATT@ALMEIDALAWGROUP.COM


Dated: December 31, 2024

By: 
PLAINTIFF JANE DOE NO. 1

Dated: _____, 2024

By: _____
PLAINTIFF JANE DOE NO. 2


Dated: December 31, 2024

By: 
PLAINTIFF B.W.

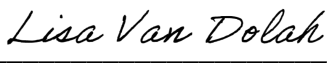
Dated: December 31, 2024

By: 
PLAINTIFF B.B.

Dated: Dec 31, 2024

By: 
PLAINTIFF B.A.

Dated: December 30, 2024

By: 
Lisa Van Dolah
Chief Executive Officer
Ivy Fertility Services, LLC and
San Diego Fertility Center Medical Group, Inc.

Dated: _____, 2025

By: _____
MATTHEW J. LANGLEY
ALMEIDA LAW GROUP LLC
849 W. WEBSTER AVENUE
CHICAGO, ILLINOIS 60614
T: 312-576-3024
MATT@ALMEIDALAWGROUP.COM

Dated: _____, 2025

By: _____
PLAINTIFF JANE DOE NO. 1

Dated: January 8, 2025

By: Jane Doe
PLAINTIFF JANE DOE NO. 2

Dated: _____, 2025

By: _____
PLAINTIFF JANE DOE NO. 3

Dated: _____, 2025

By: _____
PLAINTIFF B.W.

Dated: _____, 2025

By: _____
PLAINTIFF B.B.

Dated: _____, 2025

By: _____
PLAINTIFF B.A.

Dated: _____, 2025

By: _____

San Diego Fertility Center Medical Group, Inc.
Lisa Van Dolah

Dated: _____, 2025

By: _____
MATTHEW J. LANGLEY
ALMEIDA LAW GROUP LLC
849 W. WEBSTER AVENUE
CHICAGO, ILLINOIS 60614
T: 312-576-3024
MATT@ALMEIDALAWGROUP.COM

Dated: _____, 2025

By: _____
PLAINTIFF JANE DOE NO. 1

Dated: _____, 2025

By: _____
PLAINTIFF JANE DOE NO. 2

Dated: 1/8/25, 2025

By:  _____
PLAINTIFF JANE DOE NO. 3

Dated: _____, 2025

By: _____
PLAINTIFF B.W.

Dated: _____, 2025

By: _____
PLAINTIFF B.B.

Dated: _____, 2025

By: _____
PLAINTIFF B.A.

Dated: _____, 2025

By: _____

San Diego Fertility Center Medical Group, Inc.
Lisa Van Dolah