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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

JANE DOE NO, 1, JANE DOE NO. 2, JANE DOE NO. 3, B.W., B.A., AND B.B., on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

SAN DIEGO FERTILITY CENTER MEDICAL GROUP, INC. d/b/a SAN DIEGO FERTILITY CENTER,

Defendants.

Case No.: 37-2024-00006118-CU-BC-CTL
Judge: Hon. Marcella O. McLaughlin

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

[Declaration of Ryan Aldridge filed concurrently herewith]
Date: July 18, 2025
Time: 9:30 a.m.
Place: Department 72
Action Filed: January 25, 2024

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on July 18, 2025 at 9:30 a.m., or as soon thereafter as the matter may be heard in the courtroom of the Honorable Marcella O. McLaughlin, located in Department 72 at Sixth Floor, 330 W Broadway, San Diego, CA 92101, Plaintiffs will, and hereby do, move for an order confirming settlement of the Class and granting final approval of the Settlement.

Dated: June 27, 2025

Respectfully submitted,

/s/Vess A. Miller

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MEMORANDUM OF POINTS AND AUTHORITIES

Class Representatives B.W., B.A., B.B., Jane Doe No. 1, and Jane Doe No. 3 ("Class Representatives" or "Plaintiffs"), on behalf of the Settlement Class, hereby move the Court for entry of an order granting final approval of the Settlement Agreement (the "Settlement Agreement" or "Settlement"). Defendants San Diego Fertility Center Medical Group, Inc. ("SDFC"), and Ivy Fertility Services, LLC (individually, "Ivy," and collectively with SDFC, the "Defendants") do not oppose this motion. Class Representative and Defendants are collectively referred to herein as the "Parties."[1]

I. Introduction

On April 10, 2025, this Court entered the preliminary approval order for a proposed class action settlement between Plaintiffs and Defendants. *See* April 10, 2025 Order Granting Unopposed Motion for Preliminary Approval of Class Action Settlement ("Prelim. Approval Order"). Class Counsel's efforts created distinct monetary benefits for the approximately 58,258 Class Members in the form of a $850,000.00 non-reversionary common fund which will be used to pay, subject to Court approval, the following:

a. Pro Rata cash payments to all Class Members who submit a valid claim form;

b. The Settlement Administrator's Notice and Settlement Administration Costs; Settlement Class Representative Service Awards;

c. Class Counsel's Attorneys' Fees and Expenses Award; and

d. The distribution of any uncashed funds that remain after the Pro Rata Payment Reminder Notice (to be considered Residual Funds) via cy pres distribution.

The Settlement involved a comprehensive notice program and user-friendly claims process which has been (and continues to be) implemented by the Settlement Administrator, EisnerAmper. *See* Declaration of Ryan Aldridge of EisnerAmper In Support of Final Approval ("Aldridge Decl.")

[1] All capitalized terms not otherwise defined herein have the same meanings as set forth in the Settlement Agreement and Release ("Settlement Agreement" or "SA"), which was filed as Exhibit A to the Declaration of Vess A. Miller in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement ("Miller Decl.").

(attached hereto as **Exhibit 1**). The Court-approved notice program provided direct notice by email or mail, the creation of a toll-free telephone number to answer Class Members' questions, and the creation of a Settlement Website. *Id*. ¶¶ 7-13.

The reaction from Settlement Class Members has been positive and strongly supports final approval. 56,730 claim forms were received prior to the deadline to submit Settlement Claims. *Id*. ¶ 15. As explained below, the claims rate of almost 13% is well above the claims rate in many other large data privacy settlements which were granted final approved. Moreover, the deadline to file objections or to request exclusion was June 24, 2025. *Id*. ¶ 19. Only five (5) Class Members objected, all of which were submitted via the form available on the Settlement Website, and only two of which contained any substantive remarks. *Id*. ¶ 17. Moreover, only fourteen (14) Class Members have requested exclusion. *Id*. ¶ 16. Considering the valuable benefits conveyed to Class Members, and the significant risks they would face through continued litigation, the Settlement is fair, reasonable, and adequate and merits final approval.[2]

II. The Settlement Consideration

The Settlement provides substantial restitution to Class Members. The Total Monetary Settlement is a non-reversionary $850,000. *See* Settlement Agreement ¶ 1.7. This fund will pay the following: (1) Class Members' claims, (2) the costs of notice and claims administration, (3) Plaintiffs' attorneys' fees and costs, and (4) an incentive award to Plaintiffs. *Id*.

To date, 7,777 Class Members have submitted a claim and will receive cash payments of approximately $58.00 per claim. *See* Aldridge Decl. ¶ 15. Each Class Member was able to submit a claim either electronically through the settlement website or by mail. Settlement Agreement ¶ 5.1.

[2] In the interest of judicial efficiency, for the factual and procedural background of the proposed Settlement, Plaintiffs respectfully refer the Court to, and hereby incorporate by reference, the case summary and procedural history in Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement and Memorandum in Support, filed on January 10, 2025.

There will be no reversion to Defendants. *Id.* Any unclaimed funds will be disbursed *cy pres*. *Id.* ¶ 7.5.

III. The Notice Program

The Court appointed EisnerAmper to disseminate class notice and to administer the Settlement. Prelim. Approval Order ¶ 9. In accordance with the Court's directive, EisnerAmper employed direct notice that has been effective. On April 8, 2025, EisnerAmper received one Excel file containing two tabs of data with a combined total of 58,496 records ("Class List"). Aldridge Decl. ¶ 6. After deduplicating the data, EisnerAmper determined that the Settlement Class Member population consists of 58,273 unique records. *Id*.

Prior to mailing Notice, all mailing addresses were checked against the National Change of Address (NCOA) database maintained by the United States Postal Service ("USPS"). In addition, the addresses were certified via the Coding Accuracy Support System (CASS) to ensure the quality of the zip code and verified through Delivery Point Validation (DPV) to verify the accuracy of the addresses. *Id*. ¶ 8. Of the 58,273 Settlement Class Member records, 15 records did not successfully pass the address validation procedures noted above. *Id*.

On April 25, 2025, EisnerAmper, in accordance with the Preliminary Approval Order caused the Notice to be sent to the 58,258 Settlement Class Members that passed address validation. *Id*. ¶ 9. EisnerAmper also executed supplemental mailings for 1,249 Settlement Class Members for which the initial Postcard Notice was not deliverable but for which EisnerAmper was able to obtain an alternative mailing address through (1) forwarding addresses provided by the USPS, (2) skip trace searches using a third-party vendor database, or (3) requests received directly from Settlement Class Members. Mail notice delivery statistics are detailed in Section 14 below. *Id*.

Through the Notice procedures outlined above, EisnerAmper attempted to send direct notice to 58,258 (99.97%) Settlement Class Members with sufficient mailing information to attempt notice. *Id*. ¶ 14. As of June 24, 2025, the Notice Program reached a total of 56,714 (97.32%) of Settlement Class Members. *Id*.

In addition to the direct notice, on April 25, 2025, EisnerAmper published the Settlement Website, www.SDFCIVYPixelSettlement.com. *Id*. ¶ 11. The Website contains a summary of the

Settlement, important dates and deadlines, contact information for the Settlement Administrator, answers to frequently asked questions, downloadable copies of relevant documents, including the Notice, the Claim Form, as well as Court Documents, such as the Class Action Amended Complaint, the Settlement Agreement, the Unopposed Motion for Preliminary Approval, Orders of the Court, and other relevant documents. *Id*. Visitors were also able to submit claims electronically, important dates and deadlines, and contact information for the Settlement Administrator. *Id*. As of June 24, 2025, the Settlement Website received 25,435 unique visits.

On April 25, 2025, EisnerAmper established a dedicated toll-free telephone number, 1-844-755-4754, which is available twenty-four hours per day. *Id*. ¶ 12. Settlement Class Members can call and interact with an interactive voice response system that provides important settlement information and offers the ability to leave a voicemail message to address specific requests or issues. *Id*. EisnerAmper also provided copies of the Notice, paper Claim Form, as well as the Settlement Agreement, upon request to Settlement Class Members, through the toll-free number. Id. The toll-free number appeared in all Notices, as well as in multiple locations on the Settlement Website. The toll-free number will remain active through the close of this Notice Program. *Id*. EisnerAmper also established an Email address, info@SDFCIVYPixelSettlement.com, to provide an additional option for Settlement Class Members to address specific questions and requests to the Settlement Administrator for support. *Id*. ¶ 13.

The Settlement has been well-received by the Class. Class Members had until June 24, 2025, to submit a claim. *Id*. ¶ 15. The online claim submission feature was available beginning April 25, 2025. As of the claims deadline, EisnerAmper has received a total of 7,777 claims submissions, of which 7,260 claims have been determined to be non-duplicative and from Settlement Class Members; a claims rate of 12.98%. *Id*.; s*ee also Duran v. Obesity Research Institute, LLC* (2016) 1 Cal. App. 5th 635, 642-644 (approving class settlement where 895 claims forms were submitted after notice was sent to 237,334 class members, representing a claims rate of less than 1%); *Law Enforcement Officer v. J2 Web Servs.* (LA Super. Mar. 24, 2017) 2017 Cal. Super. LEXIS 8113, at *12-13 (approving class settlement where 520 claims forms were submitted after notice was sent to 167,569 class members, representing a claims rate of less than 1%); *Bayat v. Bank of the West* (N.D. Cal. Apr.

15, 2015) 2015 U.S. Dist. LEXIS 50416 (settlement with claims rate of 1.9% approved); *Abante Rooter & Plumbing v. Pivotal Payments* (N.D. Cal. Oct. 15, 2018) 2018 U.S. Dist. LEXIS 232054, at *13-15 (holding that a 2% claims rate is not a reason to deny approval of a settlement when the direct notice reached over 95% of class members); *Kutzman v. Derrel's Mini Storage, Inc.* (E.D. Cal. Oct. 5, 2020) 2020 U.S. Dist. LEXIS 185351, at *27-28 (stating that in determining the fairness of a class action settlement, an absence of a large number of objections to the settlement or the claims rate creates a strong presumption that the terms are favorable to the class).[3] EisnerAmper will continue to intake and analyze claims postmarked by the claims filing deadline of June 24, 2025. *Id*.

As of the close of the period for objections and opt-outs, of the almost 60,000 Class members who received notice, EisnerAmper received only fourteen timely requests for exclusion and five objections. *Id*. ¶¶ 16-17. The small number of opt-outs in comparison to the overall class size weighs in favor of approval of the Settlement. *See Chavez*, 162 Cal.App.4th at 53 (finding settlement fair and reasonable where 1,234 members, or 0.2 percent of the class, opted out); *7-Eleven Owners*, 85 Cal.App.4th 1152-53 (approving settlement and stating that response of absent class members was "overwhelmingly positive" where only 1.5 percent elected to opt out). The reaction of the Class indicates an endorsement of the Settlement and supports final approval.

Plaintiffs submit that the highly successful notice program implemented pursuant to the Settlement meets the requirements of due process and Federal Rule of Civil Procedure 23 and should be finally approved.

[3] The claims rate in this case is in line with—if not exceeds—the claims rate of many other data privacy settlements approved by courts nationwide. *See, e.g.*, *In re Forefront Data Breach Litig.*, 2023 WL 6215366, at *4 (E.D. Wis. Mar. 22, 2023) ("A claims rate of 1.46% is generally in line with the rate experienced in other data breach class actions."); *Fox v. Iowa Health Sys.*, 2021 WL 826741, at *2 (W.D. Wis. March 4, 2021) (claims rate of approximately 1%); *Carter v. Vivendi Ticketing US LLC*, 2023 WL 8153712, at *9 (C.D. Cal. Oct. 30, 2023) (claims rate of 1.56%); *In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 321 (N.D. Cal. 2018) (finding 1.8% claims rate reflects positive reaction by class); *In re Target Corp. Customer Data Sec. Breach Litig.*, 2017 WL 2178306, at *1–2 (D. Minn. May 17, 2017), *aff'd*, 892 F.3d 968 (8th Cir. 2018) (approving settlement with roughly 0.23% claims rate); *Desue v. 20/20 Eye Care Network, Inc.*, 2023 WL 4420348, at *9 (S.D. Fla. July 8, 2023) (approving claims rate of 0.66%).

IV. Legal Argument

A. Legal Standards for Final Approval

Rule 3.769 of the California Rules of Court sets forth the procedures for settlement of class actions in California. *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118. At final approval, the trial court confirms its preliminary determination "whether a settlement was fair and reasonable, whether notice to the class was adequate, whether certification of the class was proper, and whether the attorney fee award was proper." *Wershba v. Apple Computer, Inc*. (2001) 91 Cal.App.4th 224, 234-35; *see also In re Microsoft I–V Cases* (2006) 135 Cal.App.4th 706, 723; and *Dunk v. Ford Motor Co*. (1996) 48 Cal.App.4th 1794, 1802.

In exercising its discretion, "[d]ue regard . . . should be given to what is otherwise a private consensual agreement between the parties." *7-Eleven Owners for Fair Franchising v. Southland Corp*. (2000) 85 Cal.App.4th 1135, 1145. California courts favor settlement, particularly in class actions and other complex cases in which substantial resources can be conserved by avoiding the time, cost, and rigors of formal litigation. *See In re Microsoft*, 135 Cal.App.4th at 723 n. 14 ("Public policy generally favors the compromise of complex class action litigation."); *7-Eleven Owners*, 85 Cal.App.4th at 1151; *Stambaugh v. Sup. Ct.* (1976) 62 Cal.App.3d 231, 236; and 2 Newberg on Class Actions, Settlement of Class Actions § 11.41 (citing cases).

In reviewing a class action settlement, the trial court need not "reach any ultimate conclusions on the contested issues of fact and law which underlie the merits of the dispute, for it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements." *7-Eleven Owners*, 85 Cal.App.4th at 1145. As such, "the settlement or fairness hearing is not to be turned into a trial or rehearsal for trial on the merits" of Plaintiffs' claims. *Id.*; *see also Wershba*, 91 Cal.App.4th at 246. The focus is on whether the proposed settlement is fair, reasonable, and adequate under the circumstances of the case at bar. *See In re Microsoft*, 135 Cal.App.4th at 723; *see also Dunk*, 48 Cal.App.4th at 1801.

B. The Proposed Settlement Is Fair, Adequate, And Reasonable

1. The Settlement Is Entitled to a Presumption of Fairness

"[A] class action settlement is presumed to be fair [where]: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." *Chavez v. Netflix, Inc*. (2008) 162 Cal.App.4th 43, 52-53; *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128.

2. The Settlement Is the Product of Arm's-Length Negotiations By Informed Counsel

First, the Settlement Agreement was only reached through arm's-length bargaining through the assistance of well-respected third-party mediator Hon. Jay Gandhi. Declaration of Vess A. Miller in Support of Unopposed Motion for Preliminary Approval of Class Action Settlement ("Miller Decl.") ¶ 3. Counsel for both Parties has weighed the strengths and weaknesses of the case, examined all of the issues and, as a result, endorse the proposed Settlement. *Id.* ¶ 48. The parties had engaged in sufficient litigation and discovery to enable each side to evaluate the risks and value of the claims. 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. *Id*.¶ 4. Thus, the evidence demonstrates that the proposed settlement is the product of serious, informed negotiations reached through extensive, arms-length bargaining.

3. Counsel is Experienced in Similar Litigation

Third, Class Counsel has extensive experience in data breach and class action litigation. *Id*. ¶ 5 & Exs. B–E. Class Counsel is particularly experienced in litigation involving the use of Pixel tracking technology and the disclosure of personally identifiable information. *Id*. Accordingly, Class Counsel's assessment is entitled to great weight, and strongly supports final approval of the Settlement. *See Dunk*, 48 Cal.App.4th at 180; and *Kullar*, 168 Cal.App.4th at 129.

4. There is Almost No Opposition to the Settlement

In the case of few opt-outs and/or objectors, courts have uniformly held that such settlements are fair and adequate. *See Chavez*, 162 Cal.App.4th at 53; *7-Eleven Owners*, 85 Cal.App.4th at 1152-53 (8 out of 5,454 class members objecting). Here, after direct notice to 58,273 class members, there are only thirteen (13) opt-outs and five objections – each of which were submitted through the Website's online form and, of the five, only three of which contained any kind of description of their objection at all. Aldridge Decl. ¶¶ 11, 16-17.

As to the substance of those objections, they fall into two categories: 1) complaints about the adequacy of the settlement to address Defendants' use of tracking technologies; and 2) Class members' desire for greater compensation from the settlement. *See* Objections, attached to the Aldridge Decl. as Exhibit C. However, the merits of the underlying class claims are not a basis for upsetting the settlement of a class action. *See, e.g.*, *Officers for Justice v. Civil Service Com'n, etc*. (9th Cir. 1982) 688 F.2d 615, 625 (*Officers for Justice*); *City of Detroit v. Grinnell Corporation, supra*, 495 F.2d at p. 455 ("The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved."); *Linney v. Cellular Alaska Partnership*, 151 F.3d 1234, 1238(9th Cir. 1998) ("This court has aptly held that 'it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements. The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators.'" (italics omitted)).

As to the objections themselves, as discussed above, the Class members are receiving more than adequate compensation for their claims and the overwhelming majority of the claimants have no objection to the settlement – indeed, the claim rate of over 12% indicates that Class members were motivated by the adequacy of the settlement to submit claims. Injunctive relief that prevents the use of tracking technology other than those named in the Complaint are beyond the scope of this litigation and, if Defendants did in the future employ tracking technologies that violate state and/or federal law, individuals including Class members would be free to bring suit to assert their rights.

The court must determine the settlement is fair, adequate, and reasonable. *See Dunk*, 48 Cal.App.4th at pp. 1800–1801.) "'Due regard,' ... 'should be given to what is otherwise a private consensual agreement between the parties. The inquiry "must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *7–Eleven Owners*, 85 Cal.App.4th at p. 1145; quoting from *Dunk*, 48 Cal.App.4th at pp. 1801.

For all the reasons discussed below, the settlement is fair, adequate, and reasonable, and the overwhelming majority of the Class has no objection. As such, this factor weighs in favor of settlement approval and the Court should find that the "presumption of fairness" applies in this case.

5. The Settlement Is Fair, Adequate, and Reasonable

In assessing the fairness of a settlement, the court may consider several factors, including "the strength of Plaintiffs' case, the risk, expense, complexity, and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement." *In re Microsoft*, 135 Cal.App.4th at 723. The list of factors is not exclusive, and the court is free to engage in balancing and weighing factors depending on the circumstances of the case. *Dunk*, 48 Cal.App.4th at 1801.

6. The Strength of Plaintiffs' Case and the Risk, Expense, Complexity and Likely Duration of Further Litigation

To assess the adequacy of a class action settlement, the Court should weigh the risk inherent in continued litigation against the immediacy and certainty of substantial settlement proceeds. *See Dunk*, 48 Cal.App.4th at 1801-02; *Wershba*, 91 Cal.App.4th at 250-51.

Although Plaintiffs believes their case is strong, such confidence must be tempered by the fact that the Settlement is beneficial (providing a significant, immediate return) and that there were significant risks of less or no recovery, particularly in a complex case such as this one involving an uncertain class of individuals whose information may have been disclosed, undecided legal issues

that may have resulted in dismissal of part or all of Plaintiffs claims, and factual issues as to the question of the type of information the tracking technologies disclosed .

Class Counsel is convinced that the Settlement is in the best interests of the Class based on detailed knowledge of the issues presented during negotiations. Miller Decl. ¶ 6. In negotiating the Settlement, Class Counsel carefully considered the compensation of Class Members; specifically, Class Counsel balanced the Settlement against the possible outcomes of a trial on the merits. *Id.* ¶¶ 6-8. The risks of trial and the normal "perils" of litigation were all weighed in reaching the Settlement. Here, litigating the case through to trial would have been expensive, required extensive resources, involved substantial risk, and would not have been fully resolved for years. Even if Plaintiffs were to expend the time and resources litigating the case and prevail at trial, the Class would face additional risks if Defendants appealed or moved for a new trial. *See In re Apple Computer Sec. Litig*. (N.D. Cal. 1991) 1991 U.S. Dist. LEXIS 15608 (jury verdict for Plaintiffs exceeding $100 million; the court overturned the verdict and ordered a new trial). Thus, any monetary and injunctive relief, which is not guaranteed and likely would not be as substantial as what Plaintiffs has achieved with this Settlement, would likely be delayed. In contrast, the Settlement provides significant and certain relief that is available now as opposed to a fraction of this recovery potentially and hypothetically in the distant future.

Further, complex class actions can be expensive and time-consuming to prosecute. Indeed, the Parties' additional expert costs would quickly accumulate as a result of, for example, expert depositions, rebuttal reports, oppositions to expert challenges, testimony, and travel expenses, which could quickly lead to a scenario in which settlement might not be economically feasible for either party. The alternative to a class/collective settlement – i.e., individual litigation – fares no better, as it would tax private and judicial resources over a period of several years. As such, the Settlement is consistent with the "overriding public interest in settling and quieting litigation" that is "particularly true in class action suits." *Van Bronkhorst v. Safeco Corp*. (9th Cir. 1976) 529 F.2d 943, 950.

Class Counsel also carefully considered the time value of the present settlement, the fact that changes will be made to the Covered Products' advertising, and the monetary relief that will be provided to members of the Class. The Settlement creates an enforceable legal obligation with respect

to those changes. Because the Settlement provides immediate and significant relief, without the attendant risks of continued litigation, the Court should approve the Settlement as fair, reasonable, and adequate.

7. The Amount Offered in Settlement

This factor strongly favors approval. The cash payment is more than a fair compromise to the Class. It is well-established that "[t]he proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved had Plaintiffs prevailed at trial." *Wershba*, 91 Cal.App.4th at 246. Indeed, "even if 'the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated,' this is no bar to a class action settlement because 'the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation.'" *Id.* at 250.

The expenses to continue to prosecute this case would have been substantial in light of the need for expert testimony from multiple disciplines, including hair growth products, economics, conjoint analysis, and marketing. Were this case to proceed, additional expert costs would quickly accumulate as a result of expert depositions, rebuttal reports, oppositions to any *Sargon* challenges, testimony, and travel expenses. The additional accumulation of such costs could quickly lead to a scenario in which settlement might not be economically feasible for either party.

Although Plaintiffs believe in the merits of their claims, success is not guaranteed. Should litigation continue, Plaintiffs face significant risks. Data privacy and Tracking Tool cases are complex, with novel issues and evolving laws posing hurdles even at the pleading stage (such as motions to compel arbitration) and at class certification. *See, e.g.*, *Frasco v. Flo Health, Inc*., 2024 WL 4280933 (N.D. Cal. Sept. 23, 2024) (granting summary judgment in part in pixel tracking case). Further, if litigation were to continue, Defendants would continue to vigorously defend the case and the litigation could potentially span for years. Considering all of this, Plaintiffs' likelihood of success at trial is not certain. Considering these risks, the $850,000.00 non-reversionary Settlement Fund is a substantial recovery for the Settlement Class. The Settlement benefits are, therefore, fair, adequate, and reasonable compared to the range of possible recovery.

8. The Extent of Discovery Completed and the Stage of Proceedings

The Settlement came after several months of pre-suit investigation, negotiations, and litigation—Plaintiffs had a thorough understanding of the strengths and weaknesses of the case sufficient to support the reasonableness of the Settlement and its terms. Miller Decl. ¶ 4. 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. *Id*. Class Counsel also conducted a significant factual investigation into the use of third-party tracking software on certain web properties through consultation with experts and through the exchange of information with Defendants. *Id*.

Accordingly, Class Counsel acted efficiently in obtaining adequate information to determine that the Settlement is fair and reasonable. Counsel's assessment is entitled to great weight, and strongly supports approval of the proposed Settlement. *See Dunk*, 48 Cal.App.4th at 180.

9. The Experience and Views of Counsel

Counsel for the Parties are experienced and respected class action attorneys and believe the settlement is fair, adequate, and reasonable. Class Counsel's endorsement is entitled to great weight following arms-length settlement negotiations. *See Nat'l Rural Tele. Coop. v. DIRECTV*, *Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 528 ("'Great weight' is accorded to the recommendation of counsel, who are most closely acquainted with the facts of the underlying litigation."). Indeed, as the *DIRECTV* court explained, counsel "are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in the litigation." *Id.* (quoting *In re Pacific Enters. Sec. Litig.* (9th Cir. 1995) 47 F.3d 373, 378). As such, absent a finding of fraud or collusion, settlement agreements negotiated and endorsed by experienced counsel are presumptively fair and reasonable. *See Dunk*, 48 Cal.App.4th at 1802.

The Parties favor the Settlement, as evidenced by the many months of negotiation leading up to the Settlement. Class Counsel is capable and experienced in class action and consumer litigation and, in particular, litigation involving the use of tracking technologies in disclosing the information of individuals . *See* Miller Decl. ¶ 5 & Exs. B–E (Firm Resumes). By virtue of its investigation, Class

Counsel was able to thoroughly evaluate the respective strengths and weaknesses of the Parties' positions and the extent of available recovery. Class Counsel worked diligently to secure the best possible result for the Class through vigorous, arms-length negotiations. Class Counsel's views and recommendations concerning the Settlement are the product of a thorough analysis and consideration of the issues and risks of continued litigation. Class Counsel believes that Settlement results are exceptionally fair, adequate, and reasonable. Because the Parties and their counsel agree that the Settlement is fair and provides valuable benefits to the Settlement Class, this factor favors final approval.

10. The Reaction of Class Members to the Proposed Settlement

Settlement Class Members have indicated an overwhelmingly positive response to the proposed Settlement. There have been 7,487 claims submitted, representing a valid claims rate of 12.5%. Aldridge Decl. ¶ 15; *see also Duran v. Obesity Research Institute, LLC* (2016) 1 Cal. App. 5th 635, 642-644 (approving class settlement where 895 claims forms were submitted after notice was sent to 237,334 class members, representing a claims rate of less than 1%); *Law Enforcement Officer v. J2 Web Servs.* (LA Super. Mar. 24, 2017) 2017 Cal. Super. LEXIS 8113, at *12-13 (approving class settlement where 520 claims forms were submitted after notice was sent to 167,569 class members, representing a claims rate of less than 1%); *Bayat v. Bank of the West* (N.D. Cal. Apr. 15, 2015) 2015 U.S. Dist. LEXIS 50416 (settlement with claims rate of 1.9% approved); *Abante Rooter & Plumbing v. Pivotal Payments* (N.D. Cal. Oct. 15, 2018) 2018 U.S. Dist. LEXIS 232054, at *13-15 (holding that a 2% claims rate is not a reason to deny approval of a settlement when the direct notice reached over 95% of class members); *Kutzman v. Derrel's Mini Storage, Inc.* (E.D. Cal. Oct. 5, 2020) 2020 U.S. Dist. LEXIS 185351, at *27-28 (stating that in determining the fairness of a class action settlement, an absence of a large number of objections to the settlement or the claims rate creates a strong presumption that the terms are favorable to the class).

Additionally, the small number of opt-outs in comparison to the overall class size weighs in favor of approval of the Settlement. *See 7-Eleven Owners*, 85 Cal.App.4th 1152-53 (approving settlement and stating that response of absent class members was "overwhelmingly positive" where 80 class member opted out and there were 9 objectors of a class of 5,500); *see also Chavez*, 162

Cal.App.4th at 53 (finding settlement fair and reasonable where 1,234 members, or 0.2 percent of the class, opted out). Here, out of tens of thousands of class members, only 14 class members opted-out, and just 5 objected. Aldridge Decl. ¶¶ 16-17. The reaction of the Class indicates an endorsement of the Settlement and supports final approval.

C. Notice to the Class Was Adequate and Fulfilled Due Process.

In assessing notice in a class action settlement, "[t]he standard is whether the notice has a 'reasonable chance of reaching a substantial percentage of the class members.'" *Wershba*, 91 Cal.App.4th at 251. Here, the notice was sent directly to Class Members. Therefore, as the Court determined at preliminary approval, the class notice for this action exceeds the applicable due process requirements. This factor weighs in favor of final approval.

D. The Court Should Confirm Certification of The Class

In connection with preliminary approval of the settlement, the Court found that the proposed Settlement Class met all the requirements of California Code of Civil Procedure Section 382 and certified, for settlement purposes, the Settlement Class. *See* Preliminary Approval Order at ¶ 6. In the absence of any new evidence that requires revisiting the issue, Plaintiffs respectfully request that the Court confirm certification of the Class.

V. Conclusion

Plaintiffs respectfully submit that the proposed Settlement is fair, adequate, and reasonable. Further, experienced counsel recommends that the Settlement is in the best interest of the Settlement Class in light of the risks in continued litigation. Accordingly, Plaintiffs request that the Court issue an order granting final approval of the Settlement.

Dated: June 27, 2025

Respectfully submitted,

/s/Vess A. Miller

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PROOF OF SERVICE

I declare that I am a citizen of the United States, over 18 years of age, and not a party to this action. I am employed at Cohen & Malad, LLP, 1 Indiana Square, Suite 1400, Indianapolis, IN 46204.

On **June 27, 2025**, I served a copy of the foregoing document(s) entitled:

(1) Plaintiffs' Unopposed Motion for Final Approval of Class Action Settlement

(2) [Proposed] Order Granting Unopposed Motion for Final Approval of Class Action Settlement

on the interested parties in this action as follows:

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Counsel for Defendants

[X] BY ELECTRONIC SERVICE (EMAIL) TO THE ADDRESS(ES) LISTED ABOVE.

I declare under penalty of perjury under the laws of the State of California that the statements in this Proof of Service are true and correct.

Executed on June 27, 2025, at Indianapolis, Indiana.

/s/Ariatne Franco
Ariatne Franco