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Attorneys for Plaintiff and the Proposed Class

**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,

Defendant.

) Case No.: 37-2024-00006118-CU-BC-CTL
) Judge: Hon. Marcella O. McLaughlin
)
) (1) NOTICE OF MOTION AND MOTION FOR
) APPROVAL OF FEES, EXPENSES, AND SERVICE
) AWARDS; (2) MEMORANDUM OF POINTS AND
) AUTHORITIES;
) (3) [PROPOSED] ORDER GRANTING MOTION
) FOR APPROVAL OF FEES, EXPENSES, AND
) SERVICE AWARDS (UNDER SEPARATE COVER)
) Date: July 18, 2025
) Time: 9:30 a.m.
) Place: Department 72
) Action Filed: January 25, 2024
)
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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 approving payments from \$850,000 Settlement Fund as follows: (1) \$283,333.33 to Class Counsel as attorneys' fees; (2) \$25,912.59 to Class Counsel for reimbursement of litigation expenses; and (3) \$2,500 to each of the six Class Representatives as service awards.

Respectfully submitted,

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. Introduction**

3 In conjunction with final approval of the Class Action Settlement (the “Settlement”) of this
4 case, the Court should approve the requested fees, expenses, and service awards. The Settlement
5 creates an \$850,000 non-reversionary Settlement Fund from which the Class Members can claim
6 pro rata cash payments (over 7,487 valid claims have already been made, with 7,260 confirmed as
7 nonduplicative). The request for fees in the standard amount of one-third of the fund (\$283,333.33)
8 cross-checks to a multiplier of less than 1, the request for reimbursement of expenses of \$25,912.59
9 is almost entirely made up of mediation and filing fees, and the service awards of \$2,500 are
10 relatively modest in comparison to similar privacy class actions. Each of these requests is therefore
11 fair and reasonable, and the Court should approve the payments. It is estimated that, after deduction
12 of all fees, expenses, and awards, the *pro rata* payment to Class Members will be around \$60 or
13 more, providing a meaningful recovery in a case in which it is alleged that sensitive information
14 was shared without authorization for advertising purposes.

15 **II. Procedural History and Factual Background**

16 The detailed procedural history of this case is set forth in the motion for final approval. In
17 summary, this case was originally brought by two different sets of plaintiffs, with one set filing in
18 this Court and the other set filing in federal court. The complaints brought some overlapping claims
19 and some distinct claims regarding allegations that San Diego Fertility Center (“SDFC”) had
20 violated various laws by, without authorization, disclosing private information of people who
21 visited its Web Properties to third parties through the use of the Meta Pixel and related technologies.
22 In federal court, the parties fully briefed a motion to dismiss, while in this Court, Plaintiffs defeated
23 a motion to stay and engaged in discovery related to the claims.

24 Having engaged in litigation and discovery, Counsel in the two actions coordinated to
25 discuss the potential for resolution. On September 24, 2024, counsel to both actions participated in a
26 full-day mediation session with the Honorable Judge Jay C. Gandhi (ret.). Settlement Agreement, at
27
28

6 (Recitals).¹ The parties reached an agreement to settle the matters in principle, subject to agreeing to the terms of a final detailed agreement. As part of implementing the settlement, the parties agreed that the federal action would be dismissed and that the Plaintiffs in the federal action would be added to this action, along with their claims from the federal action, and along with Jane Doe No. 3, through the filing of a Second Amended Class Action Complaint, which would bring claims on behalf of a nationwide class.

III. The Settlement Agreement

Under the terms of the Settlement Agreement:

- The parties agree to the certification for settlement purposes of the following class:
All persons located within the United States who used Defendants' Web Properties from January 2020 through the present;
- Defendant will pay \$850,000 into a non-reversionary Settlement Fund;
- Class Members can claim a pro rata payment from the Net Settlement Fund by submitting a simple claim form;
- Class Counsel will seek fees of up to one-third of the Settlement Fund and the Class Representatives will seek service awards of \$2,500 each;
- Notice was provided by mail to patients of SDFC and additional Ivy clinics who became patients after January 1, 2020;
- Class Members had 60 days to opt out or object to the Settlement or to make a claim; and
- Defendant will receive the release set forth in the Settlement Agreement, relating to the released parties' Web Properties and sharing of data relating to the Web Properties.

¹ The Settlement Agreement was attached as Exhibit to the motion for preliminary approval and is hereinafter referred to as "Settlement Agreement."

1 **IV. Discussion**

2 **A. The Court should approve fees in the standard amount of one-third of the**
3 **Settlement Fund.**

4 A trial court's award of attorneys' fees will be affirmed absent an abuse of discretion.
5 *Laffitte v. Robert Half Int'l Inc.*, 1 Cal.5th 480, 488 (2016). "The 'experienced trial judge is the best
6 judge of the value of professional services rendered in [her] court . . .'" *Id.* (quoting *Serrano v.*
7 *Priest (Serrano III)*, 20 Cal.3d 25, 49 (2016)). "Fees approved by the trial court are presumed to be
8 reasonable . . ." *Id.* (quoting *In re Consumer Privacy Cases*, 175 Cal. App.4th 545, 556 (2009)).

9 "California has long recognized, as an exception to the general American rule that parties
10 bear the costs of their own attorneys, the propriety of awarding an attorney fee to a party who has
11 recovered or preserved a monetary fund for the benefit of himself or herself and others." *Laffitte*, 1
12 Cal.5th at 488–89. "In awarding a fee from the fund or from the other benefited parties, the trial
13 court acts within its equitable power to prevent the other parties' unjust enrichment." *Id.* (citations
14 omitted). A trial court has discretion to use either the "percentage of the benefit" method or the
15 "lodestar multiplier" method to calculate the appropriate fee to award from a fund. *Id.* at 497–504.

16 Under the "percentage of the benefit" method, a court awards a percentage of the fund.
17 "[W]ithin a historical range of 20 to 50 percent," a fee of one-third of the fund is a common
18 benchmark amount that is typically approved. *Id.* at 487 (affirming attorney fee award equal to one-
19 third of \$19 million settlement fund).

20 Under the "lodestar multiplier" method, a court "calculates the fee 'by multiplying the
21 number of hours reasonably expended by counsel by a reasonable hourly rate. Once the court has
22 fixed the lodestar, it may increase or decrease that amount by applying a positive or negative
23 "multiplier" to take into account a variety of other factors, including the quality of the
24 representation, the novelty and complexity of the issues, the results obtained, and the contingent risk
25 presented.' *Id.* at 489 (quoting *Lealao v. Beneficial California, Inc.*, 82 Cal. App. 4th 19, 26
26 (2000)). A typical "multiplier" is in the range of "2 to 4," with courts approving much higher
27 multipliers, as well. *See, e.g., Wershba v Apple Computer, Inc.*, 91 Cal. App. 4th 224, 255 (2001)
28 ("Multipliers can range from 2 to 4 or even higher"), *disapproved on other grounds in Hernandez v.*

1 *Restoration Hardware, Inc.*, 4 Cal.5th 260 (2018); *see also* *Lloyd v. Navy Fed. Credit Union*, No.
2 17-CV-1280-BAS-RBB, 2019 WL 2269958, at *13 (S.D. Cal. May 28, 2019), *reconsideration*
3 *denied in part*, No. 17-CV-1280-BAS-RBB, 2019 WL 2602516 (approving attorneys’ fee award
4 that resulted in 10.96 multiplier); *Steiner v. Am. Broadcasting Co.*, 248 F. App’x 780, 783 (9th Cir.
5 2007) (affirming fee award where the lodestar multiplier was 6.85).

6 In addition, a trial court has discretion to “cross-check” the amount calculated by the
7 percentage method with the multiplier that would result if that amount had been calculated by the
8 lodestar method to determine whether the award would result in a multiplier that is “extraordinarily
9 high or low.” *Laffitte*, 1 Cal.5th at 505. Trial courts that conduct lodestar cross-checks “have
10 generally not been required to closely scrutinize each claimed attorney-hour” and can rely on
11 summaries. *Id.* If the cross-check results in a wildly high or low multiplier, a court can adjust the fee
12 award up or down, “but the court is not necessarily required to make such an adjustment.” *Id.*

13 “Regardless of whether attorneys’ fees are determined using the lodestar method or awarded
14 based on a ‘percentage-of-the-benefit’ analysis under the common fund doctrine, ‘[t]he ultimate
15 goal . . . is the award of a ‘reasonable’ fee to compensate counsel for their efforts, irrespective of the
16 method of calculation.” *In re Consumer Privacy Cases*, 175 Cal. App. 4th at 557–58 (citations
17 omitted). Moreover, “[e]mpirical studies show that, regardless whether the percentage method or
18 the lodestar method is used, fee awards in class actions average around one-third of the recovery.”
19 *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 fn.11 (2008) (citations omitted).

20 The factors supporting the fee in *Laffitte* apply with equal force here. This case, like *Laffitte*,
21 involved risk given the legal issues involved. Declaration of Vess A. Miller, (“Miller Decl.”) ¶¶ 4–
22 5. Although Class Counsel believes that Plaintiff’s claims have substantial merit, the fact remains
23 that, to Class Counsel’s knowledge, no similar case has proceeded to trial. *Id.* ¶ 6. This means that
24 there is no model for Plaintiff’s case and, therefore, unforeseen pitfalls could easily derail the Class’
25 claims should they proceed through the rigors of litigation. *Id.* ¶ 7. Moreover, a number of these
26 cases have been dismissed outright at the pleading stage. *Id.* Understanding these risks, Class
27 Counsel undertook to seek recovery for the Class entirely on contingency, investing hundreds of
28 hours of their time and paying out-of-pocket expenses with no guarantee of recovery. Moreover, the

1 fact that this Settlement was achieved relatively early in the litigation is a testament to Class
2 Counsel's skill and expertise in this area of law. Achieving this result relatively early in the case
3 provides further justification for the requested fee.

4 Other factors weigh in favor of Plaintiff's fee request. Specifically, in deciding whether to
5 grant a fee award, courts consider "the nature of the litigation, its difficulty, the amount involved in
6 the litigation, the skill employed in handling the litigation, the attention given, the success of the
7 attorney's efforts, the attorney's learning and experience, the intricacies and importance of the
8 litigation, the labor necessary, and the time consumed." *Olson v. Cohen*, 106 Cal. App. 4th 1209,
9 1217 (2003). These factors weigh in favor of settlement. Indeed, privacy litigation is inherently
10 complex and requires a significant understanding of technical issues. *In re Novant Health, Inc.*, No.
11 1:22-cv-697, 2024 WL 3028443, at *7 (M.D.N.C. June 17, 2024) ("The law surrounding data
12 privacy and the surreptitious sharing of user data is still developing, making it challenging for the
13 parties to evaluate the likelihood of prevailing at trial."); *Braun v. Philadelphia Inquirer, LLC*, No.
14 22-cv-4185, 2025 WL 1314089, at *8 (E.D. Pa. May 6, 2025) (noting the same as a factor for
15 granting final approval); Miller Decl. ¶ 8. The complexity of privacy litigation, especially a case
16 involving online tracking technologies like this one, increases the skill required of counsel,
17 increases the costs of hiring experts, and increases the risk of prolonged litigation because of the
18 difficulty of explaining highly technical issues to lay persons on a jury. *Id.* This consideration
19 further weighs in favor of approving the fee.

20 If the Court wishes to perform a lodestar cross-check, it further demonstrates that the
21 requested fee award is reasonable. The lodestar method looks to the number of hours reasonably
22 expended multiplied by the reasonable hourly rate. *PLCM Grp. v. Drexler* 22 Cal. 4th 1084, 1095
23 (2000). Trial courts that conduct lodestar cross-checks "have generally not been required to closely
24 scrutinize each claimed attorney-hour, but have instead used information on attorney time spent to
25 focus on the general question of whether the fee award appropriately reflects the degree of time and
26 effort expended by the attorneys." *Laffitte*, 1 Cal. 5th 4 at 505 (internal citations and quotation
27 marks omitted].) Here, the time and effort expended supports Plaintiff's fee award request.

28 Plaintiff's counsel has spent approximately 506.33 hours performing necessary work on

1 behalf of the Classes, from investigating and gathering evidence in support of the claims resolved
2 by the Settlement; drafting the Complaint; preparing for mediation including by researching and
3 drafting a comprehensive mediation statement and by engaging an expert to review the potential
4 damages; attending mediation; negotiating and drafting the Agreement with Defendant's counsel
5 that provides substantial benefits to the Classes, moving for and obtaining preliminary approval;
6 overseeing the Settlement Administrator's efforts to provide notice to the Classes; and preparing the
7 Motion for Final Approval. Miller Decl. ¶ 9.

8 Before filing, Class Counsel thoroughly investigated the viability of Plaintiff's claims. Class
9 Counsel interviewed a number of Class Members to gather information about Defendant's conduct
10 and its impact on consumers, which was essential to their ability to understand the factual
11 circumstances of the case. *Id.* ¶ 10. Class Counsel expended significant resources researching and
12 developing the legal claims at issue. *Id.* ¶ 9. Indeed, Class Counsel is familiar with the instant
13 claims through their extensive history of litigating and resolving other privacy claims with similar
14 factual and legal issues to the case at bar. *Id.* ¶ 11. Class Counsel has experience in understanding
15 the damages at issue, and what information is critical in determining class membership. *Id.*

16 In summary, Class Counsel spent significant time communicating with Plaintiffs,
17 investigating facts, researching the law, preparing the Complaint, and otherwise litigating this case
18 after filing, including significant time negotiating discovery issues. *Id.* ¶¶ 8–9. Indeed, more work
19 will be required of Counsel to complete the settlement process, including working with the
20 Settlement Administrator to ensure that all Individual Payments are made, and if residual funds
21 exist, overseeing the issuance of residual funds to a *cy pres* recipient. *Id.* ¶ 12. These efforts have
22 required a significant amount of time and resources. Plaintiff's Counsel's 506.33 reasonable hours
23 worked multiplied by Plaintiff's Counsel's reasonable rates amount to a lodestar of \$385,161.61,
24 which represents a 0.74 multiplier—meaning counsel seeks less in fees than what was required to
25 litigate the case. *Id.* ¶ 13.

26 Plaintiff's Counsel calculated their hourly rates by the reasonable market value of Counsel's
27 services on an hourly basis. *Id.* ¶ 14. As such, they are reasonable under California law. *Ketchum*,
28 24 Cal. 4th at 1134; *Blum v. Stenson*, 465 U.S. 886, 895 n. 11 (1984); *PLCM Group, Inc.*, 22 Cal.

1 4th at 1094; *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 979 (9th Cir. 2008); *see also*
2 *Robertson v. Fleetwood Travel Trailers of Cal., Inc.*, 144 Cal. App. 4th 785, 818 (2006); *Blanchard*
3 *v. Bergeron*, 489 U.S. 87, 96 (1989) (assessing reasonable market value for attorneys working on a
4 contingent fee basis). Moreover, these fees are particularly appropriate given the deferred and
5 contingent nature of Counsel’s compensation. *Ketchum*, 24 Cal. 4th at 1132-33 (“A contingent fee
6 must be higher than a fee for the same legal services paid as they are performed. The contingent fee
7 compensates the lawyer not only for the legal services he renders but for the loan of those
8 services.”); Miller Decl. ¶ 17.

9 Because counsel seek what in reality is a reduction, not a multiplier, to their lodestar fees,
10 the cross-check confirms that the one-third fee request does not result in an unusually high
11 multiplier, confirming that it is a reasonable fee, particularly when multipliers of two to four are
12 generally reasonable. *Wershba v Apple Computer, Inc.*, 91 Cal. App. 4th 224, 255 (2001),
13 *disapproved on another ground in Hernandez v. Restoration Hardware, Inc.*, 4 Cal. 5th 260 (2018)
14 (“Multipliers can range from 2 to 4 or even higher”); *see also Lloyd v. Navy Fed. Credit Union*, No.
15 17-CV-1280-BAS-RBB, 2019 WL 2269958, at *13 (S.D. Cal. May 28, 2019), *reconsideration*
16 *denied in part*, No. 17-CV-1280-BAS-RBB, 2019 WL 2602516 (S.D. Cal. June 25, 2019)
17 (approving attorneys’ fee award in overdraft fee case which resulted in 10.96 multiplier); *Steiner v.*
18 *American Broadcasting Co.*, 248 F. App’x 780, 783 (9th Cir. 2007) (affirming fee award where the
19 lodestar multiplier was 6.85).

20 In sum, Class Counsel’s requested fee award is reasonable, even if the Court decides to
21 utilize a lodestar cross-check.

22 **B. The Court should approve the requested expenses, which were all normal costs**
23 **of litigation expended on a contingent basis.**

24 Costs related to filing fees, mediation, experts, and court fees are compensable pursuant to
25 C.C.P. § 1033.5(a) and (c)(4) and were reasonably expended in the duration of the case. Moreover,
26 reimbursement for reasonable costs and expenses in prosecution of the claims and obtaining a
27 settlement is typical for plaintiffs’ counsel. *See Serrano III*, 20 Cal. 3d at 35. In *Serrano III*, the
28 Supreme Court advised that reimbursement of costs in a common fund is “grounded in the historic

1 power of equity to permit the trustee of a fund or property, or a party preserving or recovering a
2 fund for the benefit of others in addition to himself, to recover his costs, including his attorneys'
3 fees, from the fund or property.” *Id.* (citing *Alyeska Pipeline Co. v. Wilderness Society*, 421 U.S.
4 240, 257 (1995)). Here, Class Counsel incurred expenses of \$25,912.59. Miller Decl. ¶ 15. These
5 unreimbursed expenses are filing fees, mediation costs, travel, costs for *pro hac vice* applications,
6 and some legal research expenses. *Id.* Moreover, the Settlement Agreement provides for Class
7 Counsel to recover these reasonable expenses. Settlement Agreement ¶ 4.1. Because these expenses
8 are reasonable in light of the benefits obtained for the Class, the Court should approve them.

9 **C. The Court should approve the \$2,500 service awards, which are well within the**
10 **range typically awarded.**

11 In recognition of the work of the Plaintiffs and the benefits they achieved for others,
12 Plaintiffs request a service award of \$2,500 each. Settlement Agreement ¶ 5.4. In deciding whether
13 to approve a service award, a court should consider: 1) the risk to the class representative in
14 commencing suit, both financial and otherwise; 2) the notoriety and personal difficulties
15 encountered by the class representative; 3) the amount of time and effort spent by the class
16 representative; 4) the duration of the litigation; and 5) the personal benefit (or lack thereof) enjoyed
17 by the class representative as a result of the litigation. *Cellphone Termination Fee Cases*, 186 Cal.
18 App. 4th 1380, 1394–95 (2010). Courts hold that a \$5,000 service payment in consumer a class
19 action settlement “is well within if not below the range awarded in similar cases.” *Dennis v. Kellogg*
20 *Co.*, No. 09CV1786-L, 2013 WL 6055326, at *9 (S.D. Cal. Nov. 14, 2013); *see also Cellphone*
21 *Termination Fee Cases*, 186 Cal. App. 4th at 1395 (finding no abuse of discretion in a \$10,000
22 service award); *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal. App. 4th 399, 412
23 (2010) (finding a \$5,000 service award to be reasonable). Here, Plaintiffs took on the risk of
24 potentially having their names in the public record and thereby enabled the Class to obtain the relief
25 in the proposed Settlement. Without their efforts and willingness, the Class would be left with
26 nothing. In serving as representatives of the Class, Plaintiffs have spent time in interviews with
27 counsel, reviewing documents, and approving pleadings and settlement papers. Miller Decl. ¶ 16.
28 Moreover, the only personal benefit they have or will receive as part of the Settlement is this

1 requested service award (beyond their ability to make a claim just like the rest of the Class). *Id.*
2 Additionally, in Counsel's experience, the \$2,500 request is easily in line with service awards
3 granted in other privacy class actions. *Id.* Thus, the Court should grant Plaintiffs' request for their
4 negotiated Service Awards.

5 **V. Conclusion**

6 For the reasons set forth above, the Court should enter the tendered agreed Order granting
7 Plaintiffs' request for fees and service awards.

8 Dated: June 27, 2025

Respectfully submitted,

9 /s/Vess A. Miller

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1 **PROOF OF SERVICE**

2 I declare that I am a citizen of the United States, over 18 years of age, and not a party to this
3 action. I am employed at CohenMalad, LLP, One Indiana Square, Suite 1400, Indianapolis, IN
4 46204.

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

6 **(1) Notice of Motion and Motion for Approval of Fees, Expenses, and Service
Awards;**

7 **(2) Memorandum of Points and Authorities;**

8 **(3) [Proposed] Order Granting Motion for Approval of Fees, Expenses, and
9 Service Awards (Under Separate Cover)**

10 on the interested parties in this action as follows:

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23 *Counsel for Defendants*

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

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

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

28 /s/Ariatne Franco
Ariatne Franco