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

[PROPOSED] ORDER GRANTING MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

The Court has before it Plaintiffs' Motion for Final Approval of Class Action Settlement. Having reviewed the motion and accompanying papers, the Court finds that the motion should be, and hereby is, GRANTED. The Court finds and orders as follows:

1. The Court previously granted preliminary approval to the Settlement Agreement presented now for final approval. The Court now confirms finally its preliminary determination that the "settlement was fair and reasonable," that "notice to the class was adequate," and that "certification of the class was proper." *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35 [110 Cal.Rptr.2d 145] (*Wershba*); *see also In re Microsoft I–V Cases* (2006) 135 Cal.App.4th 706, 723 [110 Cal.Rptr.2d 145] (*In re Microsoft*); *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802 [56 Cal.Rptr.2d 483] (*Dunk*).

2. "[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 [75 Cal.Rptr.3d 413]; *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128 [85 Cal.Rptr.3d 20].

3. Here, each of these factors favor the presumption of fairness because: (1) the settlement was reached through arm's-length bargaining, including use of a neutral mediator; (2) the settlement was reached after motion practice and discovery; (3) counsel is experienced in data privacy litigation; and (4) the percentage of objectors (5 out of over 58,000 class members) is small.

4. In addition, 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*, *supra*, 135 Cal.App.4th at p. 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*, *supra*, 48 Cal.App.4th at p. 1801.

5. These factors, too, favor approval of the settlement. Further litigation would have involved significant risk, expense, and complexity, as the type of claims brought by Plaintiffs have not been extensively tested in similar litigation and may have been subject to meritorious defenses. The amount offered in settlement is significant when weighed against this risk. As mentioned, discovery had taken place and counsel is sophisticated and experienced in data privacy litigation. And the reaction of the class members through limited objections and significant participation in the claims process is favorable.

6. The court finds that the settlement, taken as a whole, is fair, reasonable, and adequate to all concerned. *See Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. Out of a class of 58,258 members, only five individuals – Chelsea Glidewell-Rios, Alexis Aborah, Emily Owens, Amy Anderson, and Fateme Nikseresht – submitted written objections. The court has carefully reviewed these objections and understands the stated concerns. However, the objections do not establish that the settlement is inadequate, unfair, or otherwise undeserving of final approval. Accordingly, the objections are overruled.

7. The Court also finds that adequate notice was provided. 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*, *supra*, 91 Cal.App.4th at p. 251. Here, the notice was sent directly to Class Members, as attested to by the Settlement Administrator. Therefore, as the Court determined at preliminary approval, the class notice for this action meets the applicable due process requirements.

8. In connection with preliminary approval of the settlement, the Court previously 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. No facts have changed since that time. The Court reincorporates those prior findings and finds that class certification and appointment of class counsel and the class representatives remains appropriate for final approval of the settlement.

9. The proposed service awards of $2,500 to each plaintiff (for a total of $15,000) are reasonable and approved.

10. The litigation costs of $25,912.59, payable to class counsel, are reasonable for a case of this type and have been substantiated. (Miller Decl., ¶ 16.) They are therefore approved.

11. The claims administration costs of $85,348.78, payable to EisnerAmper, are reasonable for a class action with nearly 60,000 class members. Moreover, the costs have been substantiated. (Aldridge Decl., ¶ 18.) Thus, the claims administration costs are approved.

12. Finally, the attorney's fees proposal of $283,333.33 represents one-third of the gross settlement amount of $850,000. This is not out of line with class action fee awards calculated using the percentage-of-the-benefit method. *See Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 fn. 11. Moreover, according to supporting declaration submitted with the moving papers, plaintiffs' attorneys expended a total of 506.33 hours prosecuting this action. (Miller Decl., ¶ 14.) This results in a blended hourly rate of approximately $559.58 ($283,333.33 divided by 506.33), which is reasonable for similar work in San Diego County during the relevant time period. The requested fee award is also less than counsel's theoretical lodestar of $385,161.61 (calculated using counsel's design hourly rates). (*See id.* at ¶¶ 13-14.) Thus, the requested fees represent, in effect, a negative multiplier. In sum, based on the evidence submitted, the court finds that the requested fee award of $283,333.33 is reasonable under the circumstances and hereby approved. *See Nemecek & Cole v. Horn* (2012) 208 Cal.App.4th 641, 651 ("The amount to be awarded as attorney fees is left to the sound discretion of the trial court, which is in the best position to evaluate the services rendered by an attorney in his courtroom.").

13. As of the Effective Date, the releases set forth in the settlement shall become effective and binding.

14. This is a final judgment resolving the case as to all Named Plaintiffs, the Certified Class (defined as all persons located with the United States who used Defendants' Web Properties from January 2020 through April 4, 2025) and all Defendants (San Diego Fertility Center Medical Group, Inc. and Ivy Fertility Services, LLC). The Court retains jurisdiction over the parties to enforce the terms of the judgment.

IT IS SO ORDERED.

MARCELLA O. MCLAUGHLIN

Aug. 27, 2025