SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

34-2019-00258072-CU-BT-GDS: Jane Doe I vs. Sutter Health
09/19/2025 Hearing on Motion for Preliminary Approval of Settlement of PAGA in Department 22

Tentative Ruling

Plaintiffs Jane Doe I and Jane Doe II's ("Plaintiffs") motion for preliminary approval of the Parties' class action settlement is UNOPPOSED, and tentatively GRANTED, subject to the Parties' clarification regarding the Class release and the documentation requested below. Accordingly, the Parties' **APPEARANCE IS REQUIRED**.

Status Conference (Compliance Hearing) is scheduled for 10/10/2025 at 10:30 AM in Department 22 at Gordon D. Schaber Superior Court.

Hearing on Motion for Final Approval of Settlement is scheduled for 02/27/2026 at 9:00 AM in Department 22 at Gordon D. Schaber Superior Court.

The Court has provided specific direction on the information and argument the Court requires to grant a motion for preliminary and final approval of a class action settlement. The Parties shall carefully review the Checklist for Approval of Class Action Settlements and fully comply with each applicable item to ensure a prompt ruling from the Court.

The Court has received and reviewed the joint prosecution agreement lodged for *in camera* review. (7-31-25 Notice of Lodging.)

Motion to Seal

Plaintiffs also move to seal certain documents and information provided in support of Plaintiffs' motion for preliminary approval. (Notice Mot. to Seal.) In the interests of judicial economy and efficiency, the Court combines its rulings on these motions into one Tentative Ruling.

The "court may order that a record be filed under seal only if it expressly finds facts that establish: (1) There exists an overriding interest that overcomes the right of public access to the record; (2) The overriding interest supports sealing the record; (3) A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed; (4) The proposed sealing is narrowly tailored; and (5) No less restrictive means exist to achieve the overriding interest." (CRC rule 2.550(d).) A record may not be sealed solely on the basis of the parties' stipulation. (*Id.*, rule 2.551(a).) Where the factual requirements are established by the moving party, the court must "[d]irect the sealing of only those documents and pages, or, if reasonably practicable, portions of those documents and pages, that contain the material that needs to be placed under seal. All other portions of each document or page must be included in the public file." (*Id.*, rule 2.551(e).)

Rule 2.551(b) provides that a "party that files or intends to file with the court, for the purposes of adjudication or to use at trial, records produced in discovery that are subject to a confidentiality agreement or protective order, and does not intend to request to have the records sealed, must: (i) Lodge the unredacted records subject to the confidentiality agreement or protective order … in the manner stated in (d); (ii) File copies of the documents in (i) that are redacted so that they do not disclose the contents of the records that are subject to the confidentiality agreement or protective order; and (iii) Give written notice to the party that produced the records that the records … lodged under (i) will be placed in the public court file unless that party files a timely motion or application to seal the records under this rule. (CRC rule 2.551(b)(3).)

Plaintiffs seek to seal (1) the Confidential Supplemental Agreement attached as Exhibit 3 to the Ramirez Jones declaration in support of Plaintiffs' supplemental brief (and previously lodged conditionally under seal with the Court); (2) portions of Plaintiffs' supplemental brief at page 6, line 5; and (3) portions of the Ramirez Jones declaration in support Plaintiffs' supplemental brief at page 3, lines 5 through 6.

Plaintiffs argue that redaction is necessary to preserve Plaintiffs' overriding interest in protecting their PHI (which Plaintiffs describe as the number of times they logged into their patient portal) and to prevent third parties (i.e. professional objectors) from disrupting the settlement. (Mot. to Seal, pp. 4:24-7:20.) Plaintiffs further argue that they would be prejudiced if the opt-out threshold were not sealed, as "it would invite interference with an otherwise adequate settlement from those who seek to disrupt settlements for personal gain." They assert they would also be prejudiced if their PHI were disclosed, given that they are seeking to enforce their privacy rights in this action. (*Id.*, pp. 7:21-8:7.) Finally, Plaintiffs argue that their requests are narrowly tailored and no less restrictive means exist. (*Id.*, p. 8:8-17.)

Plaintiffs' motion to seal is UNOPPOSED and GRANTED as to Exhibit 3, but otherwise DENIED. Without opining on whether the number of times one visits a patient portal (and the related amount of monetary damages) constitutes PHI, Plaintiffs' alleged privacy interest in that information is already protected through the use of pseudonyms. The Court will sign the Proposed Order submitted with Plaintiffs' motion to seal, with corrections to be consistent with this Order.

Pursuant to Rule 2.551(b)(6), **Plaintiffs must notify the Court within 10 days of this Order if the materials may be filed unsealed.** "If the moving party does not notify the court within 10 days of the order, the clerk must (1) return the lodged record to the moving party if it is in paper form or (2) permanently delete the lodged record if it is in electronic form." (CRC Rule 2.551(b)(6).) To avoid undue delay in resolving the motion for preliminary approval, before the Compliance Hearing set below, Plaintiffs shall file either (1) amended papers that only redact Exhibit 3, or (2) amended papers that redact Exhibit 3 and are further revised to omit the information regarding Plaintiffs' number of visits and associated damages.

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Background

Plaintiffs, patients of Defendant Sutter Health ("Defendant"), initiated this class action on June 10, 2019. (Complaint.) Following extensive motion practice, Plaintiffs filed the operative Fourth Amended Class Action Complaint ("Operative Complaint"), alleging three causes of action: (1) violation of the California Invasion of Privacy Act ("CIPA"); (2) breach of express contract; and (3) breach of implied contract. This action arises out of Plaintiffs' use of Defendant's publicly-accessible website to access Defendant's "MyHealthOnline" patient portal ("MHO" and/or "Portal"). (Operative Complaint, ¶¶ 3-6.) Essentially, Plaintiffs challenge Defendant's use of tracking cookies, which Plaintiffs allege conveyed personally identifiable information ("PII") and protected health information ("PHI"), such as patient status, to third parties like Facebook and Google. (*Id.*, ¶¶ 7-13.)

The Parties fully briefed Plaintiffs' motion for class certification. (Koncius Decl., ¶¶ 12-14.) Before the motion for class certification was argued or decided, the Parties participated in two private mediation sessions on June 27, 2024 and September 6, 2024. (*Id.*, ¶¶ 15, 17-19.) At the conclusion of the second mediation session, the Parties accepted a mediator's proposal. (*Id.*, ¶ 19.)

On June 13, 2025, the Court continued Plaintiff's motion for preliminary approval to address several issues. (6-13-25 Minute Order.) Plaintiffs now seek preliminary approval of the Parties' revised Class Action Settlement Agreement ("Agreement"). (Ramirez Jones Decl., ¶ 3, Exh. 1 ("SA").)

Legal Standard

The law favors the settlement of lawsuits, particularly in class actions and other complex cases where substantial resources can be conserved by avoiding the time, expense, and rigors of formal litigation. (See *Neary v. Regents of Univ. of Cal* (1992) 3 Cal.4th 273, 277-281; *Lealao v. Beneficial California, Inc*. (2000) 82 Cal.App.4th 19, 52.) However, a class action may not be dismissed, compromised, or settled without approval of the court, and the decision to approve or reject a proposed settlement is committed to the court's sound discretion. (See Cal. Rules of Court, Rule 3.769; *Wershba v. Apple Computer*, *Inc*. (2001) 91 Cal.App.4th 224, 234-35 (*Wershba*).)

In determining whether to approve a class settlement, the court's responsibility is to "prevent fraud, collusion or unfairness to the class" through settlement because the rights of the class members, including the named plaintiffs, "may not have been given due regard by the negotiating parties." (*Consumer Advocacy Group, Inc. v. Kintetsu Enters. of Am.* (2006) 141 Cal.App.4th 46, 60.) The court must independently determine "whether the settlement is in the

best interests of those whose claims will be extinguished" and "make an independent assessment of the reasonableness of the terms to which the parties have agreed." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130, 133.) The burden of establishing the fairness and reasonableness of the settlement is on the proponent. (*Wershba, supra*, 91 Cal.App.4th at p. 245; see also *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135 1165-66.)

The Court does not rubber stamp these motions, but rather serves as a guardian of absent class members' rights to ensure the settlement is fair. (*Luckey v. Superior Court* (2014) 228 Cal.App.4th 81, 95.) "Ultimately, the [trial] court's determination is nothing more than 'an amalgam of delicate balancing, gross approximations and rough justice." (*7-Eleven, supra*, 85 Cal.App.4th at p. 1145.) "A settlement need not obtain 100 percent of the damages sought in order to be fair and reasonable. Compromise is inherent and necessary in the settlement process. Thus, 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 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.'" (*Wershba, supra*, 91 Cal.App.4th at p. 250, citations omitted.) The court's primary objective for preliminary approval is to establish whether to direct notice of the proposed settlement to the class, invite the class's reaction, and schedule a final fairness hearing. (Rubenstein et al., Newberg on Class Actions (6th Ed. 2025) § 13:10.)

Provisional Class Certification

If the class has not yet been certified, part of the motion for preliminary approval will include a request for provisional certification for purposes of settlement only. (See Cal. Rule of Court, Rule 3.769.) Although the provisional process is less demanding than a traditional motion for class certification, a trial court reviewing an application for preliminary approval of a settlement must still find that the normal class prerequisites have been met. (See *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 625-627 (1997); in accord, *Carter v. City of Los Angeles* (2014) 224 Cal.App.4th 808, 826.)

Here, Plaintiffs seek provisional certification of the following Class: "[A]ll individuals who were California residents at the time they logged into their own Sutter Health MyHealthOnline portal account for purposes relating to their own healthcare from June 10, 2015, through March 20, 2020." (SA, ¶ 1.30.) Excluded from the Settlement Class are: (a) any Judge presiding over this Action, any members of the Judges' respective staffs, and immediate members of the Judge's family; (b) officers and directors of Defendant, its subsidiaries, parent companies, successors, predecessors, and any entity in which Defendant has a controlling interest; (c) persons who timely and validly request exclusion from and/or opt-out of the Settlement Class; and (d) the legal representatives, successors or assigns of any such excluded persons. (*Ibid.*)

Plaintiffs argue that provision certification is appropriate because (1) the settlement class of approximately 1,628,160 individuals is sufficiently numerous; (2) the settlement class is sufficiently ascertainable from Defendant's records of logins; (3) Plaintiffs' claims are typical of the class because Plaintiffs are California residents and Sutter Health patients who logged into the patient portal for purposes relating to their own healthcare; (4) Plaintiffs are adequate representatives because they have no antagonism or conflicts of interest with the proposed class, they actively participated in this case, and are represented by qualified and competent Counsel; (5) common questions of law and fact predominate because this action centers on common legal questions relating to whether Sutter Health's disclosure of patients' PII and PHI resulting from its use of tracking technologies violates the rights of Class Members; and (6) a class action is the superior method of adjudicating this litigation. (Mot., pp. 12:25-16:28) The Court finds Plaintiffs' arguments persuasive and provisionally certifies the Class for settlement purposes for the reasons specified in Plaintiffs' moving papers.

Class Representative and Class Counsel

Plaintiffs are appointed as Class Representatives. (SA, ¶ 1.7.) Jason "Jay" Barnes and Eric Johnson at the Simmons Hanly Conroy LLP law firm, along with Jeffrey A. Koncius and Nicole Ramirez Jones at the Kiesel Law LLP law firm are appointed Class Counsel. (*Id.*, ¶ 1.6.)

Fair, Adequate, and Reasonable Settlement

Before approving a class action settlement, the Court must find that the settlement is "fair, adequate, and reasonable." (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) The Court considers such factors as "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 class members to the proposed settlement." (*Ibid.*) "[A] presumption of fairness exists 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." (*Id.*, at p. 1802.)

Under the terms of the Agreement, Defendant denies liability, but agrees to pay a Settlement Fund of $21,500,000 to resolve Plaintiffs' claims. (SA, ¶¶ 1.32, 2.1, 22.) Defendant will pay into the Fund as follows: (a) Defendant shall pay $250,000 into the Settlement Fund 30 days after this Court enters the Preliminary Approval Order, which shall be available to cover Notice and Claims Administration Costs incurred prior to entry of the Final Approval Order and Final Judgment, and (b) Defendant shall pay the balance of the Settlement Fund ($21,250,000) 30 days after the Effective Date.[1]

The Settlement Fund shall be used by the Settlement Administrator to pay for: (a) reasonable Notice and Claims Administration Costs incurred pursuant to this Settlement Agreement as approved by the Parties and approved by the Court; (b) any Incentive Awards approved by the Court; (c) any Fee and Cost Award as approved by the Court; and (d) any benefits to Settlement Class Members, pursuant to the terms and conditions of this Agreement. (SA, ¶ 2.3.) The Net Settlement Fund ("NSF") means the amount of funds that remain in the Settlement Fund after funds are paid from or allocated for payment from the Settlement Fund for the following: (a) reasonable Notice and Claims Administration Costs incurred pursuant to this Agreement; (b) any taxes owed by the Settlement Fund[2]; (c) any Incentive Awards approved by the Court; and (d) any Attorneys' Fees, Costs, and Expenses approved by the Court. (*Id.*, ¶ 1.17.)

The Agreement provides that Class Counsel will move for, and Defendant will not oppose, a fee award in an amount not to exceed $7,095,000 (33% of the Settlement Fund). (SA, ¶ 8.1.) The Agreement also provides that Class Counsel will move for reimbursement of costs and expenses, but does not specify an amount. (*Ibid.*) Counsels' current estimated costs are $204,990.21. (Mot., p. 4, fn. 4; Koncius Decl., ¶ 34, Exh. 3; Johnson Decl., ¶ 17, Exh. B.) The Agreement also provides for the payment of an incentive award of up to $10,000 to each Plaintiff. (*Id.*, ¶ 8.3.) The Agreement does not specify an amount for Administration Costs. Epiq Class Action & Claims Solutions, Inc. ("Epiq"), the administrator selected by the Parties, estimates that "the cost to implement the Notice Plan and administer the settlement is estimated to be between $385,000 - $445,000" and that Epiq agrees to a not-to-exceed budget of $445,000. (Azari Decl., ¶ 34.) Accordingly, the NSF is estimated to be approximately $13,735,009.79. (Mot., p. 4:9, fn. 4.)

No later than 14 days after the entry of the Preliminary Approval Order, Defendant shall produce to the Settlement Administrator an electronic list from its records that includes the full names, email addresses (if known), and last known U.S. Mail addresses, to the extent available, belonging to persons within the Settlement Class. (SA, ¶ 4.1(a).) No later than the Notice Date,[3] the Settlement Administrator shall send Notice via email substantially in the form attached as Exhibit B to the Agreement, along with an electronic link to the Claim Form, to all Settlement Class Members for whom a valid email address is available in the Class List. (*Id.*, ¶ 4.1(b).) In the event transmission of email notice results in any "bounce-backs," the Settlement Administrator shall, where reasonable: (i) for any email notice for which a bounce code is received indicating that the message was undeliverable for reasons such as an inactive or disabled account, the recipient's mailbox was full, technical autoreplies, etc., at least two additional attempts will be made to deliver the notice by email, and (ii) send Notice substantially in the form attached as Exhibit C via First Class U.S. Mail. (*Ibid.*) Before mailing any Notice, the Settlement Administrator will update the U.S. mail addresses of individuals on the Class List using the National Change of Address database and other available resources deemed suitable by the Settlement Administrator. (*Id.*, ¶ 4.1(c).) The Settlement Administrator will also provide the Notice via a website, which will include the ability to file the Claim Form online. (*Id.*, ¶ 4.1(e).)

Class Members will have 60 days after the Notice Date to request exclusion from the settlement or submit written objections to the settlement. (SA, ¶¶ 1.12, 1.20, 4.2, 4.3, 4.5.) The Agreement provides that Class Members "must present [their] objections in writing." (SA, ¶ 4.3.) Notwithstanding the Agreement's terms, the Court will generally hear from any Class Members who attend the final approval hearing and ask to speak regarding their objections, regardless of whether they have submitted written objections in advance or if they have filed a notice of intent to appear. Accordingly, the Parties have revised the Long Form Notice to include the following language: "regardless of whether you file a notice of intent to appear, the Court will generally hear from any settlement class member who attends the final approval hearing and asks to speak." (Plaintiffs' Supp. Brief, p. 5:5-10.)

The Agreement provides that "[e]ach Settlement Class Member will be entitled to complete and submit a single Claim Form that will, if valid and approved by the Settlement Administrator, entitle him or her to a payment of a pro rata share of the [NSF]." (SA, ¶¶ 2.9(a), 2.10.) The Claim Form may be submitted in either electronic or paper format. (*Id.*, ¶ 1.4.) All Claim Forms must be postmarked or received to be considered timely and shall be set as a date 60 days after entry of the Final Judgment, meaning the date when the Final Judgment and Order is entered by the Court (the "Claims Deadline"). (*Id.*, ¶¶ 1.5, 1.16.) Both 30 and 7 days before the Claims Deadline, the Settlement Administrator shall again send Notice via email substantially in the form attached as Exhibit B (with minor, non-material modifications to indicate that it is a reminder email rather than an initial notice), along with an electronic link to the Claim Form, to all Settlement Class Members for whom a valid email address is available in the Class List. (*Id.*, ¶ 4.1(d).)

The Settlement Administrator will be responsible for reviewing all Claim Forms to determine their validity. (SA, ¶ 2.11.) The Settlement Administrator will reject any Claim Form that does not comply in any material respect with the instructions on the Claim Form or the terms of this Agreement, or is submitted after the Claims Deadline. (*Ibid.*) Each claimant who submits an invalid Claim Form to the Settlement Administrator must be given a notice of the Claim Form's deficiency and an opportunity to cure the deficiency within 21 days of the date of the notice. (*Id.*, ¶ 5.2.) The Settlement Administrator may contact any Person who has submitted a Claim Form to obtain additional information necessary to verify the Claim Form. (*Ibid.*) However, the Settlement Administrator shall not be required to send such notice where such Claim Form is being rejected on the basis of it being a fraudulent claim and Counsel for the Parties agree. (*Ibid.*) Any Settlement Class Member who does not file a valid Claim Form shall not be entitled to receive any payment pursuant to this Agreement, but will otherwise be bound by all of the terms of this Agreement, including the terms of the Final Judgment to be entered in the Action and the Releases provided for in the Agreement, and will be barred from bringing any action against any of the Released Parties concerning the Released Claims. (*Id.*, ¶ 4.7.)

Plaintiffs explain that a "claim form is appropriate in this case because, as part of the common

fund Settlement, [Defendant] required that class members attest that they logged into their own Sutter Health MyHealthOnline portal account for purposes relating to their own healthcare, rather than for someone else's healthcare." (Plaintiffs' Supp. Brief, p. 2:21-24.) Defendant confirms that since its "log files do not reflect […] if each login to a person's HMO account was done by themselves or by someone else, and the reason for the login" and that it is "necessary, fair, and reasonable to align monetary recovery from the Settlement's common fund with Plaintiffs' theory of the case, the controlling law, and the 'Settlement Class' definition." (Defendant's Supp. Brief, p. 4:18:24.) Accordingly, a claim form is needed to effectuate that attestation requirement.

Plaintiffs further argue that the claims process is not so burdensome as to make relief inaccessible because (1) the proposed email notice includes a link, which class members can click to file a claim form; (2) the proposed postcard notice includes a URL where class members can file a claim form; and (3) because class members used the Internet to access their health information, it follows that using the same format to access and file a claim form. (Plaintiff's Supp. Brief, p. 3:1-8.) To encourage claims submission, reminder email notices will be sent to all identified Settlement Class Members who have not yet filed a Claim Form or requested exclusion from the Settlement and who have a valid email address where the initial notice was not returned as undeliverable. (*Id.*, p. 3:9-13.) In addition, the Agreement provides for the creation of a settlement website where class members can access and file claim forms. (*Id.*, p. 3:13-15.) Finally, Plaintiffs argue that the anticipated claims rate is between 5-10% of the total settlement class.

The Agreement provides that valid, approved claims will be paid in "[a]n amount equal to a pro rata share of the [NSF] for each Approved Claim, not to exceed $90.00 per Claim" which will be paid 120 days after the Final Judgment. (SA, ¶¶ 2.8(d), 2.9(a).) The "cap was the subject of extensive negotiation between the Parties" and was selected to avoid a potential windfall to any one class member. (Plaintiffs' Supp. Brief, p. 4:2-4; Mot., p. 6, fn 7.) Plaintiffs further argue that the proposed cap is consistent with similar settlements. (Plaintiffs' Supp. Brief, p. 4:5-21.) Finally, the cap is not likely to be exceeded in any event because if 9.37% of the Class submits a claim – which is within the anticipated claims rate – the pro rata amount of the net funds available will be $90 and every claim above that percentage will result in a lower pro rata share. (*Id.*, p. 4:21-25.) Defendant argues that the cap is reasonable and appropriate (1) in light of the relative strength of Plaintiffs' claims, including essentially no value for Plaintiffs' CIPA claims; (2) because the cap is near the upper limit of the range of contractual damages, and nearly double the lower end, calculated by Plaintiffs' expert; and (3) the cap prevents a windfall. (Defendant's Supp. Brief, pp. 9:5-10:6.)

Each Settlement Class Member may choose to receive his or her payment via check, Venmo, PayPal, or Zelle. (SA, ¶ 2.9(b).) Payment by check will be the default payment method if a Settlement Class Member does not state a preferred method of payment. (*Ibid.*) Those Settlement

Class Members whose payment checks are not cleared within 180 days after issuance will have their checks voided. (*Id.*, ¶ 2.12.) Any residual funds remaining in the Net Settlement Fund after administration of the Settlement Agreement will be divided evenly and donated as cy pres to Privacy Rights Clearinghouse ("PRC") and the AHIMA Foundation. (*Id.*, ¶ 2.13.) PRC is an independent 501(c)(3) non-profit organization serving as a longstanding leader in data privacy education and advocacy. (Land Decl., ¶ 4.) AHIMA is a 501(c)(6) nonprofit organization dedicated to supporting health information professionals in ensuring that patient information is accurate, protected, and accessible. (Iaboni Decl., ¶ 4.) Both designated cy pres beneficiaries attest that any amount paid to them as cy pres beneficiaries will be used exclusively for their California state-wide advocacy and education work. (Land Decl., ¶ 11; Iaboni Decl., ¶ 10.) Plaintiffs confirm that they have no interest or involvement, financial or otherwise, in the proposed cy pres beneficiaries. (Doe I Supp. Decl., ¶ 2; Doe II Supp. Decl., ¶ 2.)

Class Release

The Agreement provides that "[u]pon the Effective Date, the Releasing Parties, and each of them, shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims against the Released Parties, and each of them." (SA, ¶ 3.2.)

As amended, the Agreement defines the "Released Claims" as follows:

> [A] specific release of any and all claims (including "Unknown Claims" as defined below) against Released Parties, or any of them, that were alleged or could have been alleged based on, reasonably arising out of, or reasonably relating to any facts alleged in the Action regarding the alleged disclosure, use, interception, or transfer of information related to a Settlement Class Member through use of Google Analytics, the Meta pixel, other cookies, other pixels, web beacons, java script, or other tracking, analytics, and/or advertising technologies on or involved with any of the Released Parties' respective websites, web domains, webpages, or portals. Such release includes but is not limited to:
>
> (a) Potential, filed, fixed or contingent, claimed or unclaimed, demands, liabilities, rights, causes of action, contracts or agreements, non-economic damages, economic damages, punitive damages, statutory damages, nominal damages, civil penalties, equitable relief, expenses, costs, and attorneys' fees based on, reasonably arising out of, or reasonably relating to

any facts that were alleged in the Action; and/or

(b) Obligations whether in law or in equity, accrued or unaccrued, direct, individual, representative, of every nature and description whatsoever, whether based on state, federal, local, statutory, or common law or any other law, rule or regulation, based on, reasonably arising out of, or reasonably relating to any facts that were alleged in the Action.

(SA, ¶ 1.25.)

The "Unknown Claims" are defined as "any of the Released Claims that any of the Releasing Parties do not know or suspect to exist, which, if known by him or her, might have affected his or her settlement with, and release of, the Released Parties or the Released Claims or might have affected his or her decision to agree, object or not to object to and/or participate in the Settlement." (SA, ¶ 1.35.) "Releasing Parties" is defined, in pertinent part, as Plaintiffs and those Class Members who do not exclude themselves from the settlement. (*Id.*, ¶ 1.27.) Plaintiffs are now subject to a general release with an explicit section 1542 waiver. (*Id.*, ¶ 3.3.)

Plaintiffs argue that the "Parties took the Court's guidance and revised the Settlement Agreement so as to clarify what claims are being released" and that the revisions "demonstrate[] that the release language has been streamlined and simplified, and further makes clear that the 1542 waiver applies to the named Plaintiffs only." (Plaintiffs' Supp. Brief, pp. 4:27-5:3.) The Court appreciates the Parties' efforts to streamline the releases. However, the Court still has concerns regarding the inclusion of "Unknown Claims" as it relates to the absent Class Members. While it no longer includes an express section 1542 waiver, the language still essentially effectuates a general release and a section 1542 waiver as to absent Class Members. The Court is inclined to conclude that the "Unknown Claims" definition and related references should be removed. The Parties shall be prepared to address the Court's concerns and explain why this language is appropriate and permissible.

Upon further review, the Court also notes that the Agreement also includes the following language in the class release: "Further, upon the Effective Date, and to the fullest extent permitted by law, each Settlement Class Member, shall, either directly, indirectly, representatively, or in any capacity, be permanently barred and enjoined from filing, commencing, prosecuting, intervening in, or participating (as a class member or otherwise) in any lawsuit, action, or other proceeding in any jurisdiction (other than participation in the Settlement as provided herein) against any Released Party based on the Released Claims." (SA, ¶ 3.2.)

Blanket injunctions are generally not appropriate. "[A]n injunction against parallel litigation is

rarely necessary: preclusion is that injunction." (Newberg, *supra*, § 13:19.) Further, such injunctions are especially inappropriate at the preliminary approval stage because "the court has not given notice to the class, not heard objections to the settlement, not weighed the settlement's strengths and weaknesses in an adversarial setting, and likely not finally certified a class … enjoining collateral litigation based on an interlocutory preliminary review order issued under a very low standard would be an extraordinary measure best reserved for extraordinary circumstances." (*Ibid.*) The Newberg treatise cautions that:

> Courts should be on the lookout for such provisions and wary about signing them. Quite often, the presence of such a provision in a preliminary approval order is evidence that the parties are settling the present case precisely to enjoin collateral litigation, a practice that raises a red flag about whether the present settlement is a collusive suit aimed at foreclosing a stronger suit in the collateral forum.

(*Ibid.*) The Court is not persuaded that this case warrants an injunction. The Court is inclined to conclude that this language should be removed. The Parties shall be prepared to address the Court's concern.

Discovery and Exposure

Before initiating this action, Plaintiffs' Counsel conducted a thorough investigation, including hiring an expert to perform various analyses to confirm the occurrence of the alleged disclosures on Defendant's website. (Koncius Decl., ¶ 5.) Before the motion for class certification was argued or decided, the Parties participated in two private mediation sessions with Judge Andler (Ret.) of JAMS, a well-respected class action mediator. (*Id.*, ¶ 15.) As part of the mediation, the Parties exchanged mediation briefs as well as further details on issues relevant to class certification and the merits, such that the Parties had sufficient information to assess the strengths and weaknesses of the claims and defenses. (*Id.*, ¶ 16.) At the conclusion of the second mediation, Judge Andler (Ret.) made a mediator's proposal to settle the case, which the Parties accepted. (*Id.*, ¶ 19.)

Plaintiffs argue that the Settlement Fund "is reasonable in light of the strengths and weaknesses of the claims and the risks of the particular litigation." (Mot., p. 11:24-26.) Plaintiffs assert that they estimated Defendant's maximum exposure as follows: (1) for Plaintiffs' CIPA claim, $5,000 per violation or "$5,000 multiplied by the number of disclosures"; and (2) for Plaintiffs' breach of contract claims, an estimated monthly damages total of $4.62 "multiplied by the number of months that a Class Member logged into the 'secure' patient portal." (*Id.*, pp. 11:27-12:11.) Counsel further explains that, based on the information provided by Defendant, each class member was identified as having at least one unique log in. (Ramirez Jones Decl., ¶ 8(a).)

Therefore, the minimum contract damage across the class is $7,522,099.20 (1,628,160 * $4.62) and the CIPA exposure is $8,140,800,000 (1,628,160 * $5,000). (*Id.*, ¶¶ 8(a) and (b).) The Settlement Fund represents approximately 0.26% of Defendant's maximum combined exposure. However, this maximum exposure does not account for the risks associated with further litigation, including Defendant's factual and legal defenses, as well as the likelihood of an appeal if Plaintiffs were to prevail at trial. (Mot., p. 12:12-24.)

Counsel attests to their extensive experience in similar cases. (Koncius Decl., ¶ 32, Exh. 2; Johnson Decl., ¶¶ 9-10, Exh. A.) Counsel attests to their belief that the settlement is fair, reasonable, and adequate. (Koncius Decl., ¶ 32; Johnson Decl., ¶ 13.) Based on the foregoing, the Court preliminarily finds, subject to the final fairness hearing, that the Settlement is within the ballpark of reasonableness and is entitled to a presumption of fairness and that all relevant factors support preliminary approval.

Proposed Class Notice

The notice to Class Members must fairly apprise the prospective members of the terms of the settlement without expressing an opinion on the merits of the settlement. (*7-Eleven Owners for Fair Franchising v. Southland Corp*. (2000) 85 Cal.App.4th 1135, 1164; see also Cal. Rules of Court, Rule 3.769.) "Whether a claimant would want to accept or reject the proposed settlement is a decision to be made by him independently and without influence or pressure from those competing parties who either favor or oppose the settlement." (*Phila. Hous. Auth. v. Am. Radiator & Std. Sanitary Corp.* (E.D. Pa. 1970) 323 F.Supp. 364, 378.)

The Parties have adequately addressed the Court's concerns regarding the Notices. (6-13-25 Minute Order; SA, Exhs. A-D) Accordingly, the Notices are approved.

Class Counsel Fees and Costs

The Agreement provides that Class Counsel will move for, and Defendant will not oppose, a fee award in an amount not to exceed $7,095,000 (33% of the Settlement Fund). (SA, ¶ 8.1.) The Agreement also provides that Class Counsel will move for reimbursement of costs and expenses, but does not specify an amount. (*Ibid.*) Counsels' currently estimated costs are $204,990.21. (Mot., p. 4, fn. 4; Koncius Decl., ¶ 34, Exh. 3; Johnson Decl., ¶ 17, Exh. B.) Plaintiffs argue "Class Counsel's fees and costs are reasonable and justified, considering their extensive work on this case for almost six years, including many rounds of motion practice, extensive discovery, full briefing on a motion for class certification, and arm's length negotiations that only came about after two mediation sessions with Judge Andler (Ret.) and an eventual mediator's proposal." (Mot., p. 4:15-18.) Class Counsel have entered into a fee splitting agreement which the clients have approved in writing. (Mot., p. 5:1-5; Doe I Decl. ¶ 14; Doe II Decl. ¶ 14; Joint Prosecution Agreement [lodged for in camera review].)

The requested award is preliminarily approved. In moving for final approval, the Court expects Counsel to support their arguments with respect to this amount, including by providing information necessary to perform a lodestar analysis. (See *In re Activision Sec. Litigation* (N.D. Cal. 1989) 723 F.Supp. 1373, 1379; *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557-58 & fn. 13.; *Martin v. Ameripride Servs.* (S.D. Cal. June 9, 2011), 2011 WL 2313604 at *22 (collecting cases); *Vasquez v. Coast Valley Roofing, Inc*. (E.D. Cal 2010) 266 F.R.D. 482, 491 (same); see also *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 & n.11.)

The Court also preliminarily approves the Agreement's costs allocation with the expectation that Counsel will provide a declaration, in moving for final approval, that shows actual costs.

Settlement Administrator

The Agreement provides for the payment of settlement administration costs, but does not specify an amount. (SA, ¶¶ 1.17, 2.3.) Epiq Class Action & Claims Solutions, Inc. ("Epiq"), the administrator selected by the Parties, estimates that "the cost to implement the Notice Plan and administer the settlement is estimated to be between $385,000 - $445,000" and that Epiq agrees to a not-to-exceed budget of $445,000. (Azari Decl., ¶ 34.)

Epiq is appointed as Settlement Administrator, and the costs estimate is reasonable and preliminarily approved.

Class Representative Incentive Awards

The Agreement provides for the payment of an incentive award of up to $10,000 to each Plaintiff. (SA, ¶ 8.3.) Plaintiffs describe their efforts and provide an estimate of the time they each spent participating in this litigation. (Doe I Decl., ¶¶ 10-11 [at least 80 hours]; Doe II Decl., ¶¶ 10-11 [at least 49 hours].)

The requested incentive award is preliminarily approved.

Proposed Order

The following issues must be addressed in the Proposed Order:

- The Proposed Order must be revised to reference and attach the amended Agreement and Notices. If the Agreement is further amended in response to the Court's remaining concerns regarding the release, the Proposed Order should reflect that.
- Based on the hearing date set below, Plaintiff shall fill in as many blanks as possible.
- The Proposed Order still includes language indicating that Class Members waive objections if they fail to timely serve written objections. Given the discussion above, this

language should be removed.

Compliance Hearing

The Court sets a Compliance Hearing for **October 10, 2025 at 10:30 a.m.** No later than October 3, 2025, Plaintiffs shall file (1) amended moving papers to address the Court's ruling on sealing; (2) proof of the Agreement's amendment, if the Parties further revise the Agreement to address the Court's remaining concerns; and (3) a revised Proposed Order, addressing the issues identified above.

The revised Proposed Order shall be filed separately. If Plaintiffs adequately address the Court's concerns, the Court will sign the revised Proposed Order, and no appearance will be required.

Final Approval Hearing

The Court will again review and consider the terms of this settlement at the time of the final approval hearing. The Court sets a Final Approval Hearing for **February 27, 2026 at 9:00 a.m**. If either party is unavailable on that date, the parties shall meet and confer to identify three other Fridays at 9:00 a.m. that work for the parties to schedule the hearing. They shall then submit those dates to the Court via email at Dept22@saccourt.ca.gov, and the Court will reschedule the hearing accordingly.

The briefing shall be filed in conformity with Code of Civil Procedure section 1005.

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[1] The "Effective Date" means the date 10 days after which all of the events and conditions specified in Paragraph 9.1 have been met and have occurred. (SA, ¶ 1.11.) Paragraph 9.1 provides that the "Effective Date of this Settlement Agreement shall not occur unless and until each of the following events occurs and shall be the date upon which the last (in time) of the following events occurs: (a) The Parties and their counsel have executed this Agreement; (b) The Court has entered the Preliminary Approval Order; (c) The Court has entered an order finally approving the Agreement, following Notice to the Settlement Class, and has entered the Final Judgment, or a judgment consistent with this Agreement in all material respects; and (d) The Final Judgment has become Final, as defined above, or, in the event that the Court enters an order and final judgment in a form other than that provided above ('Alternative Judgment') and that has the consent of the Parties, such Alternative Judgment becomes Final." (*Id.*, ¶ 9.1.)
[2] The Agreement provides that "[a]ll taxes owed by the Settlement Fund shall be paid out of the Settlement Fund, shall be considered a Notice and Claims Administration Cost, and shall be timely paid by the Settlement Administrator without prior order of the Court." (SA, ¶ 2.6; see also ¶ 5.1.) The Settlement Administrator confirms that it does not anticipate any taxes will have to be paid from the Settlement. (Plaintiffs' Supp. Brief, p. 3:21-24; Amin-Giwar Decl., ¶ 7.)
[3] The "Notice Date" means the date by which the initial Direct Notice set forth in Paragraph 4.1

is complete, which shall be no later than 45 days after Preliminary Approval. (SA, ¶ 1.19.)

To request oral argument on this matter, you must call Department 22 at (916) 874-5762 by 4:00 p.m., the court day before this hearing and notification of oral argument must be made to the opposing party/counsel. If no call is made, the tentative ruling becomes the order of the court. (Local Rule 1.06.)

Parties requesting services of a court reporter may arrange for private court reporter services at their own expense, pursuant to Government code §68086 and California Rules of Court, Rule 2.956. Requirements for requesting a court reporter are listed in the Policy for Official Reporter Pro Tempore available on the Sacramento Superior Court website at https://www.saccourt.ca.gov/court-reporters/docs/crtrp-6a.pdf. The list of Court Approved Official Reporters Pro Tempore is available at https://www.saccourt.ca.gov/court-reporters/docs/crtrp-13.Pdf.

If you are not using a reporter from the Court's Approved Official Reporter Pro Tempore list, a Stipulation and Appointment of Official Reporter Pro Tempore (CV/E-206) must be signed by each party, the private court reporter, and the Judge. The signed form must be filed with the clerk prior to the hearing.

If a litigant has been granted a fee waiver and requests a court reporter, the party must submit a Request for Court Reporter by a Party with a Fee Waiver (CV/E-211). The form must be filed with the clerk at least 10 days prior to the hearing or at the time the hearing is scheduled if less than 10 days away. Once approved, the clerk will forward the form to the Court Reporter's Office and an official reporter will be provided.

If oral argument is requested, the Parties are encouraged to appear via Zoom with the links below:

To join by Zoom link - https://saccourt-ca-gov.zoomgov.com/my/sscdept22
To join by phone dial (833) 568-8864 ID 16184738886

Counsel for Plaintiffs is directed to notice all parties of this order.

Please note that the Complex Civil Case Department now provides information to assist you in managing your complex case on the Court website at https://www.saccourt.ca.gov/civil/complex-civil-cases.aspx. The Court strongly encourages parties to review this website regularly to stay abreast of the most recent complex civil case procedures. Please refer to the website before directly contacting the Court Clerk for

information.