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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

RONA KOMINS, on behalf of herself, her children, B.K. and M.K, and all others similarly situated,

Plaintiff,

v.

DAVE YONAMINE, JOHN LIBBY, MOBILITYWARE, LLC; DOES 1-100, inclusive, and ROES Software Development Kit Business Entities 1-100, inclusive.

Defendants.

Case No: 19STCV24865

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

Date: September 18, 2024
Time: 11:00 a.m.
Dept.: 14
Judge: Hon. Kenneth R. Freeman

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

I. INTRODUCTION

On June 11, 2024, this Court granted preliminary approval of a proposed class action settlement (the "Settlement") between Plaintiff Rona Komins ("Plaintiff") and Defendants Dave Yonamine, John Libby, and MobilityWare, LLC (together, "Defendants"). Plaintiff now respectfully requests that the Court grant final approval of the Settlement and enter the [Proposed] Final Approval Order and Judgment submitted herewith.

The Settlement merits final approval. Under its terms, MobilityWare will update each of the MobilityWare Gaming Apps to include a permanent, clear, and conspicuous pop-up notification that: (i) informs app users of MobilityWare's privacy policy and collection of personal information, and of app users' ability to opt out of selling of their personal information as applicable based on their regional privacy laws; (ii) informs app users that MobilityWare will delete personal information collected by app users upon request; and (iii) asks users to confirm that they are at least 18 years of age. Agreement § 7.2. MobilityWare will not collect, share, or sell personal information from new app users whose device settings indicate that they are in the United States unless and until the app users have (i) scrolled through the entirety of the notification, (ii) confirmed that they have read the notification, and (iii) confirmed that they are at least 18 years of age. Agreement § 7.2. Further, Defendants have agreed to make a $100,000.00 *cy pres* payment, split equally between the Electronic Frontier Foundation, a non-profit digital rights group that champions user privacy (*see* https://www.eff.org/about), and the Electronic Privacy Information Center, a public interest non-profit research and advocacy organization established to "secure the fundamental right to privacy in the digital age for all people…" *See* https://epic.org/about/. Agreement § 7.3.

This is an excellent recovery for the Settlement Class. The Settlement emerged only after extensive arm's-length negotiations, including a mediation session with the Honorable Jay C. Gandhi (Ret.) of JAMS, several months of post-mediation negotiations, and multiple status conferences with the Court. The Settlement provides certainty, finality, and valuable injunctive and *cy pres* relief. In its June 11, 2024 Preliminary Approval Order, this Court found that the Settlement fell within the range of possible approval, and preliminarily concluded that it was fair, reasonable, and adequate, so as to warrant submission to members of the Settlement Class for their consideration. In conformity with the Preliminary Approval Order, RG/2 Claims Administration, LLC ("RG/2") has fully disseminated

notice to the Class. *See* Declaration of Stephanie Valerio submitted concurrently herewith ("Valerio Decl."), ¶¶ 1-8. As of the date of this filing, no class members have objected to or opted out of the settlement. Accordingly, the Court should grant final approval of the Settlement.

II. FACTUAL BACKGROUND

On July 17, 2019, Plaintiff filed a Class Action Complaint in the Superior Court of California for the County of Los Angeles (the "Court"), captioned *Rona Komins v. Dave Yonamine, et al.*, Case No. 19STCV24865. Plaintiff's complaint alleged that as users download and play MobilityWare's gaming apps, Defendants automatically collect personal information about the users and track online behavior. *See* Third Amended Complaint ("TAC"). Plaintiff's operative complaint alleged causes of action for (a) violations of California's Constitutional Right to Privacy, (b) Intrusion Upon Seclusion, (c) violations of California's Unfair Competition Law, (d) Fraud by Omission, (e) Negligent Misrepresentation, and (f) Quasi-Contract. *See* TAC.

On February 11, 2020, Defendants filed a Motion to Compel Arbitration, arguing that Plaintiff was required to arbitrate her claims. Defendants' Motion to Compel Arbitration was denied on August 20, 2020. On September 30, 2020, Defendants filed a Joint Brief regarding Defendants' Demurrer to Plaintiff's First Amended Complaint. On October 20, 2020, the Court entered an Order declining to rule on the demurrer and permitting Plaintiff to file a further amended complaint. On October 26, 2020, Plaintiff filed a Second Amended Complaint. On November 25, 2020, Defendants Dave Yonamine and John Libby demurred to Plaintiff's Second Amended Complaint, and all Defendants filed a Motion to Strike Plaintiff's Second Amended Complaint. On February 9, 2021, the Court overruled Defendants' Demurrer and Motion to Strike in their entirety, except that it *sua sponte* struck Plaintiff's claim for unjust enrichment with leave to amend to file a claim for quasi-contract. On March 1, 2021, Plaintiff filed a Third Amended Complaint which substituted a claim for quasi-contract in place of the claim for unjust enrichment. *See* TAC.

On March 31, 2021, Defendants filed a Notice of Removal to federal court, and filed a Motion to Dismiss on April 7, 2021. *See Komins v. Yonamine, et al.* (C.D. Cal.) Case No. 2:21-cv-02757-MCS-RAO, at Dkt. Nos. 1, 9. On April 19, 2021, Plaintiff filed a Motion to Remand, and on April 21, 2021, Plaintiff filed an opposition to Defendants' Motion to Dismiss. *See id.* at Dkt. Nos. 11-12. On May 17, 2021, the action was remanded to Superior Court. *See id.* at Dkt. No. 28 [Order Granting

Motion to Remand]. On May 28, 2021, Defendants filed a Motion to Transfer Venue. On July 2, 2021, the Court denied Defendants' Motion to Transfer Venue. On July 7, 2021, Defendants filed an Answer to Plaintiff's Third Amended Complaint in which they denied Plaintiff's allegations and asserted affirmative defenses.

The parties exchanged multiple rounds of written discovery and attended multiple informal discovery conferences with the Court concerning the written discovery. *See* Declaration of Ronald A. Marron filed concurrently herewith ("Marron Decl."), ¶ 5. After motion practice and significant discovery efforts, the Parties attended a full day mediation session before the Honorable Judge Jay C. Gandhi (Ret.) of JAMS. *Id*. On November 2, 2021, the Parties attended their full-day mediation session before Judge Gandhi, where they agreed in principle to certain terms of an injunctive relief class action settlement. *Id*. Following the first mediation session, the Parties participated in further telephonic sessions with Judge Gandhi and engaged in extensive negotiations to finalize the text of the Settlement Agreement themselves, as well as a notice plan and proposed order for the Court. *Id*.

The Settlement Agreement is the product of vigorous, adversarial, and competent representation of the Parties and substantive negotiations throughout the pendency of this litigation. *See* Marron Decl. ¶ 6. Plaintiff's counsel exercised due diligence to confirm the adequacy, reasonableness, and fairness of the settlement, both before and after mediation. *Id*. Plaintiff's counsel was aware of the attendant strengths, risks, and uncertainties of Plaintiff's claims, and Defendants' defenses, during the course of negotiations. *Id*. Defendants, throughout the course of the litigation, have vigorously denied any wrongdoing or liability, and contend that they would be wholly successful in defeating Plaintiff's claims at or before trial.

Despite the vigorous opposition on both sides, the Parties appreciate the costs and uncertainty attendant to any litigation, and have agreed to a proposed settlement agreement. Marron Decl., ¶ 7. Plaintiff's counsel agreed to settle the action pursuant to the provisions of the Settlement, after considering, among other things: (i) the substantial benefits to Plaintiff and the Class under the terms of the Settlement; (ii) the uncertainty of being able to prevail at trial; (iii) the uncertainty relating to Defendants' defenses and the expense of additional motion practice in connection therewith; (iv) the attendant risks, difficulties and delays inherent in litigation, especially in complex actions such as this;

and (v) the desirability of consummating this Settlement promptly in order to provide substantive relief to Plaintiff and the Class without unnecessary delay and expense. *Id*.

After several status conferences with the Court and additional briefing submitted on February 22, 2022, April 21, 2023, August 9, 2023, and December 14, 2023, Plaintiff filed an amended settlement agreement on March 29, 2024. The Court granted the motion for preliminary class settlement on June 11, 2024 and set the final approval hearing for September 18, 2024. The deadline to submit any opt-out notices and written objections was set for August 19, 2024.

The Class Notice program was fully executed in accordance with its design and under the terms approved by the Court. *See* Valerio Decl., ¶¶ 3-8. In consultation and collaboration with the Parties, RG/2 Claims Administration established a settlement website and provided the Court-ordered social media notice to Settlement Class Members. *Id*., ¶¶ 4-6. The notice procedures are consistent with the class-action notice plan that was approved by this Court and constitute the best notice practicable under the circumstances. Valerio Decl., ¶ 8.

The deadline for Settlement Class Members to submit written objections or requests to be excluded from the Settlement Class was August 19, 2024. To date, there have been zero (0) written objections to the settlement and zero (0) request for exclusion. Valerio Decl., ¶ 7.

III. LEGAL STANDARD

The final settlement or compromise of an entire class action requires the approval of the court after a hearing. Cal. R. Ct. 3.769(a). The approval of a proposed settlement of a class action suit is a matter within the broad discretion of the trial court. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35, disapproved of on other grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260. In considering a potential settlement for preliminary approval purposes, the court does not have to reach any ultimate conclusions on the issues of fact and law on the merits of the dispute, and need not engage in a trial on the merits. *See Wershba,* 91 Cal.App.4th at 239-240; *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.

Before final approval, the Court must conduct an inquiry into the fairness of the proposed settlement. Cal. R. Ct. 3.769(g). The approval of a proposed settlement of a class action suit is a matter within the broad discretion of the trial court. *Wershba*, 91 Cal.App.4th at 234-35; *Dunk*, 48

Cal.App.4th at 1801. The law favors settlement, particularly in class actions where substantial resources can be conserved by avoiding the time, cost and rigors of formal litigation. *See* 4 Newberg on Class Actions (4th ed. 2009) § 11.41. As a practical matter, the overwhelming majority of proposed settlements are approved when the court is satisfied that arm's length bargaining took place during settlement negotiations and experienced class counsel recommends approval of the settlement. 4 Newberg on Class Actions § 11:42 (4th ed. 2009), p. 118-119. Plaintiff's Motion for Preliminary Approval explained how this case met all the requirements for Class Certification. This motion, therefore, focuses on final approval.

IV. SUMMARY OF THE CLASS ACTION SETTLEMENT

A. The Settlement Class

The Settlement Class is defined as "all persons who played any of the following MobilityWare Gaming Apps on a mobile device in the United States at any time between July 17, 2015 and June 11, 2024:

- Solitaire;
- Tripeaks Solitaire,
- Pyramid Solitaire,
- FreeCell Solitaire,
- Crown Solitaire,
- Spider Solitaire,
- Spider Go Solitaire,
- Castle Solitaire,
- Addiction Solitaire,
- Mahjong Solitaire,
- Yukon Russian Solitaire Game,
- Aces Up Solitaire,
- Destination Solitaire,
- Hearts Card Game,
- Puzzle Cats,
- Sudoku Simple,
- Spades Card Game,
- Tropical Treats,
- Word Wiz,
- Word Warp,
- Sunny Shapes,
- Word Search,
- Tetra Block – Puzzle Game,
- Dice Merge Puzzle Master,

- Blackjack,
- Match & Rescue – Match 3 Game,
- Vegas Blvd Slots,
- Block Party Bingo,
- 52 Card Pick-up,
- Excite Bear – Animal Bikers, and
- Monopoly Solitaire."

Settlement Agreement § 2.31.

B. Injunctive Relief

The Settlement provides for significant injunctive relief whereby Defendants have agreed to provide added disclosures relating to the collection and use of personal information by the MobilityWare apps. Agreement § 7.2. Defendants have also agreed to implement certain business practices in order to better ensure that children do not have their data collected by the MobilityWare apps. *Id*. Specifically, MobilityWare will update each of the MobilityWare Gaming Apps to include a permanent, clear, and conspicuous pop-up notification that: (i) informs app users of MobilityWare's privacy policy and collection of personal information, and of app users' ability to opt out of selling of their personal information as applicable based on their regional privacy laws; (ii) informs app users that MobilityWare will delete personal information collected by app users upon request; and (iii) asks users to confirm that they are at least 18 years of age. *Id*. MobilityWare will not collect, share, or sell personal information from new app users whose device settings indicate that they are in the United States unless and until the app users have (i) scrolled through the entirety of the notification, (ii) confirmed that they have read the notification, and (iii) confirmed that they are at least 18 years of age. Agreement § 7.2.

The value of these substantive changes to Defendants' business practices cannot be overstated. These changes help achieve the goals of this lawsuit, address the harm allegedly caused to the Settlement Class, and provide invaluable relief going forward. *See, e.g.*, *McDonald v. Kiloo A/S* (N.D. Cal. Sept. 24, 2020) Nos. 17-cv-04344-JD, 17-cv-04419-JD, 17-cv-04492-JD, 2020 WL 5702113, at *5 (granting preliminary approval of injunctive-relief-only settlement in privacy case involving gaming apps); *Campbell v. Facebook Inc.* (N.D. Cal. Aug. 18, 2017) No. 13-CV-05996-PJH, 2017 WL 3581179, at *5 (granting final approval of injunctive-relief-only settlement where Defendants agreed to

make additional disclosures to users about its policies regarding use of data), *aff'd*, 951 F.3d 1106 (9th Cir. 2020).

C. *Cy Pres* Relief

The Settlement also provides for a $100,000.00 *cy pres* payment, split equally between the Electronic Frontier Foundation, a non-profit digital rights group that champions user privacy (*see* https://www.eff.org/about), and the Electronic Privacy Information Center, a public interest non-profit research and advocacy organization established to "secure the fundamental right to privacy in the digital age for all people…" *See* https://epic.org/about/. Agreement § 7.3. This is an excellent recovery for the Settlement Class. *See, e.g., In re Netflix Privacy Litig*. (N.D. Cal. 2013) No. 5:11–CV–00379, 2013 WL 1120801, at *11 (approving settlement for injunctive relief and *cy pres*-only relief, finding *cy pres* distribution "has been found to be an appropriate relief mechanism" in online privacy cases); *Lane v. Facebook, Inc.* (9th Cir. 2012) 696 F.3d 811, 821 (*cy pres* distribution appropriate where "the proof of individual claims would be burdensome or distribution of damages costly.").

D. Release

As of the date the injunctive relief described in Section 7.2 of the Settlement Agreement is fully provided, the Settlement Class will release any and all claims for injunctive or equitable relief brought for, by, or on behalf of, Settlement Class Members, that are asserted in the Operative Complaint. Agreement § 10.1. The Settlement Class will not release any claims for damages or other monetary relief (whether actual, nominal, punitive, exemplary, statutory, or otherwise) for any Settlement Class Member. *Id*. Further, the released claims do not include any claims from minors who are under the age of 18 as of the Effective Date. *Id*.

E. Attorneys' Fees/Costs and Class Representative Enhancement Award

The Settlement Agreement provides that Class Counsel "will petition the Court for Fees and Costs (including the cost of notice and the Incentive Award) in the total amount of $800,000.00" and that Class Counsel "will specifically petition the Court for an Incentive Award to Plaintiff in the amount of $7,500.00." Agreement §§ 8.1 – 8.2. Plaintiff has fully addressed the reasonableness of the requested attorneys' fees, costs, and incentive award in her motion for attorneys' fees filed on August 5, 2024.

F. Notice Has Been Fully Disseminated

In accordance with the Settlement Agreement and the Court's Order Granting Preliminary Approval, RG/2 has fully disseminated notice to the Class. Valerio Decl., ¶¶ 3-8. The settlement website (www.mobilitywareclassaction.com) was established in accordance with the Preliminary Approval Order and Class Litigation Settlement Agreement dated March 27, 2024. Valerio Decl., ¶ 4. The website provides important information about the settlement, including links to the notices, links to important documents including the Settlement Agreement and Order Granting Preliminary Approval, and contact information for the Notice Administrator. Valerio Decl., ¶ 4. RG/2 Claims also made available a toll-free phone number at (866) 742-4955 for Class Members to speak with a live operator or leave a voicemail message requesting a returned call. Valerio Decl., ¶ 5.

On July 6, 2024 through August 4, 2024, RG/2 Claims launched a digital media notice using banner ads placed on the Google Display network, a social media notice using paid banner ads on the Facebook and Instagram social media platforms and paid search Notice ads placed on Google and Bing search engines. Valerio Decl., ¶ 6. The ad campaign totaled 3,982,327 impressions. *Id*.

G. Opt-Outs and Objections

Any Class Member who did not wish to be a part of this Settlement Agreement was permitted to request to be excluded by submitting a Request for Exclusion to the Notice Administrator by August 19, 2024. Settlement Agreement § 5.1. The deadline to request exclusion has passed. To date, the Notice Administrator received zero (0) requests for exclusion. Valerio Decl., ¶ 7.

Any Class Member who objects to the Settlement may submit to the Notice Administrator a written statement of objection by the August 19, 2024 response deadline. Settlement Agreement § 5.2. To date, no written objections have been received. Valerio Decl., ¶ 7. Class members who fail to make objections in writing to the Notice Administrator by the response deadline may still make their objections orally at the final approval/settlement fairness hearing. Settlement Agreement § 5.3.

V. THE COURT SHOULD GRANT FINAL APPROVAL

A. This Class Action Settlement Is Entitled to a Presumption of Fairness

This settlement agreement deserves the presumption of fairness. Under California law, a "presumption of fairness exists if (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." *Dunk*, 48 Cal.App.4th at 1802.

Here, the first and second factors are clearly met. The settlement in this litigation is the result of hard-fought capable advocacy on both sides. Marron Decl., ¶¶ 12. There was no collusion in creating this Agreement, which is the result of skilled negotiation. *Id.* The parties exchanged formal discovery that formed the basis of negotiations and included information necessary for Class Counsel to ensure that the settlement was proper. *Id*. That information permitted the Class Representative and her counsel to make informed decisions about settlement and allowed the parties to fully evaluate the strengths and weaknesses of their claims. Defendants continue to deny liability in this matter, but have agreed to this Settlement nonetheless. Settlement Agreement § 12.4. Altogether, this Settlement Agreement is entitled to the presumption of fairness.

Third, the Law Office of Ronald A. Marron has extensive experience handling class action cases and class action settlements, and are qualified Class Counsel. Marron Decl., ¶¶ 14-52. Class Counsel has worked diligently to prosecute this case and to reach a fair settlement for the Settlement Class. *Id*. Therefore, the experience of counsel is not in question.

Finally, it is expected that the number of objections and opt-outs will be small. As of the date of this motion, there have been zero written objections, and zero opt-outs. Valerio Decl., ¶ 7. The response deadline for written objections and opt outs has passed, and class members may only present verbal objections if they appear the final approval hearing. Settlement Agreement § 5.3. The lack of known objections and opt-outs shows that the Class itself is willing to participate in the settlement. Therefore, this settlement has a presumption of fairness.

B. Additional Factors Support Final Approval of the Class Action Settlement

Other factors courts consider also demonstrate that the settlement is fair. Under California law:

> The trial court's discretion is broad, and is to be exercised through the application of several well-recognized factors. The list, which "is not exhaustive and should be tailored to each case," includes "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." "The most important factor is the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement." While the court "must stop short of the detailed and thorough investigation that it would undertake if it were actually trying the case," it "must eschew any rubber stamp approval in favor of an independent evaluation."

Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles (2010) 186 Cal. App. 4th 399, 407–08 (internal quotations and citations omitted).

The Settlement Agreement is fair, reasonable and adequate and is in the best interest of the Settlement Class in light of all known facts and circumstances, including the risk of loss of class certification, loss on the merits of each claim, significant delay, and defenses asserted by Defendants. Proceeding also has its risks of appellate issues. *See* Marron Decl., ¶ 9. Plaintiff and Class Counsel recognize the expense and burden of continuing to litigate and try this action against Defendants through possible appeals, which could take several years. *Id.* Class Counsel has also considered the uncertain outcome and risk of litigation. *Id*.

C. The Settlement Class Received Adequate Notice of the Settlement

"The principal purpose of notice to the class is the protection of the integrity of the class action [settlement] process." *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 970. The proposed notice of settlement must "fairly apprise the class members of the terms of the proposed compromise and of the options open to dissenting class members." *Wershba,* 91 Cal.App.4th 224, 251.

The Court should find that the notice was adequate and comports with due process. As an initial matter, because this Settlement provides for injunctive relief to the Class without releasing claims for monetary relief, notice to the class is not necessarily required. *See Hefczyc v. Rady Children's Hosp.-San Diego* (2017) 17 Cal. App. 5th 518, 535; *Savaglio v. Wal-Mart Stores, Inc.* (Cal. Super. Ct. 2003) 2003 Cal. Super. LEXIS 6704, *43 ("The [classes] are certified to seek injunctive and declaratory relief only, so the Court is inclined to order that it is not necessary to provide class members with notice and an opportunity to opt out of the class."); *Baumrind v. Brandstorm Inc.* (Cal. Super. Ct. 2021) 2021 Cal. Super. LEXIS 7434, *10 ("As the class settlement provides for injunctive relief only and requires no release of rights by any Settlement Class Member to any statutory damages or monetary relief, the Parties agree that no notice will be sent to any Settlement Class Member.").

Notwithstanding, the class notice disseminated to Settlement Class Members fairly apprised Settlement Class Members of the relevant details regarding the settlement and the options available to them, and were in the same basic form of the Proposed Settlement Notice approved by this Court at the Preliminary Approval hearing. Valerio Decl., ¶¶ 3-8 & Exs. A-C. The settlement website (www.mobilitywareclassaction.com) was established in accordance with the Preliminary Approval Order and Class Litigation Settlement Agreement dated March 27, 2024. Valerio Decl., ¶ 4. RG/2 Claims also made available a toll-free phone number at (866) 742-4955 for Class Members to speak with a live operator or leave a voicemail message requesting a returned call. Valerio Decl., ¶ 5. Between July 6, 2024 and August 4, 2024, RG/2 Claims launched a digital media notice using banner ads placed on the Google Display network, a social media notice using paid banner ads on the Facebook and Instagram social media platforms and paid search Notice ads placed on Google and Bing search engines. Valerio Decl., ¶ 6. The ad campaign totaled 3,982,327 impressions. *Id*. Accordingly, the Settlement Class received notice of the Settlement.

D. The Settlement Is Fair and Adequate

1. The Settlement is the Product of Serious, Informed, Non-collusive Negotiations

The settlement in this litigation is the result of hard-fought capable advocacy on both sides. Marron Decl., ¶ 12. There was no collusion in creating this Agreement, which is the result of skilled negotiation. *Id*. The parties exchanged formal discovery that formed the basis of negotiations. *Id*. Defendant continues to deny liability in this matter, but has agreed to this Settlement nonetheless. Settlement Agreement § 12.4. Altogether, this Settlement Agreement is entitled to the presumption of fairness.

2. The Settlement has no "Obvious Deficiencies"

The proposed settlement has no obvious deficiencies and is well within the range of reasonableness that supports possible final approval. First, all class members received the same Notice and opportunity to object to the settlement and to reap the benefit of the injunctive and *cy pres* relief after settlement has been approved. The injunctive and *cy pres* relief provided by the settlement will benefit the Settlement Class fairly and equally. The goals of the litigation have been met.

3. The Settlement Does Not Favor the Class Representative or Segments of the Class

The settlement does not improperly grant preferential treatment to Class Representative or segments of the Settlement Class in any way. All members of the Class will receive the same injunctive and *cy pres* relief. Settlement Agreement §§ 7.2 – 7.3. Ms. Komins will be treated the same as all other Class Members, except for her Incentive Award of $7,500, subject to the Court's approval. Settlement Agreement § 8.2. The proposed Incentive Award is fair and well earned, as Ms. Komins has been an active participant and advocate for the Class throughout the past five (5) years. Marron Decl., ¶ 10.

4. The Settlement Falls Within the Range of Possible Judicial Approval

In approving class action settlements, the court should consider relevant factors including the strength of plaintiff's case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount of discovery completed and the stage of the proceedings, and the experience and views of counsel. *In re Microsoft I-V Cases*, 135 Cal.App.4th at 723. In this case, the evidence supports the conclusion that the Settlement falls within the range of judicial approval. *See, e.g., McDonald v. Kiloo A/S* (N.D. Cal. Sept. 24, 2020) Nos. 17-cv-04344-JD, 17-cv-04419-JD, 17-cv-04492-JD, 2020 WL 5702113, at *5 (granting preliminary approval of injunctive-relief-only settlement and noting that "any damage award" for claims of intrusion upon seclusion and violations of the California constitutional right to privacy, the UCL, and various consumer protection statutes "was uncertain and likely to have been nominal for most class members"); *Campbell v. Facebook Inc.* (N.D. Cal. Aug. 18, 2017) No. 13-CV-05996-PJH, 2017 WL 3581179, at *5 (granting final approval of injunctive-relief-only settlement where Defendants agreed to make additional disclosures to users about its policies regarding use of data), *aff'd*, 951 F.3d 1106 (9th Cir. 2020); *see also In re Netflix Privacy Litig*. (N.D. Cal. 2013) No. 5:11–CV–00379, 2013 WL 1120801, at *11 (approving settlement for injunctive relief and *cy pres*-only relief, finding *cy pres* distribution "has been found to be an appropriate relief mechanism" in online privacy cases); *Lane v. Facebook, Inc.* (9th Cir. 2012) 696 F.3d 811, 821 (*cy pres* distribution appropriate where "the proof of individual claims would be burdensome or distribution of damages costly."). Class Counsel achieved a successful result on behalf of the Settlement Class.

VI. CONCLUSION

The parties have committed substantial amounts of time and energy resolving this matter. The proposed settlement is a fair and reasonable compromise of the issues in dispute. The Settlement Class was provided with notice of the settlement, had the opportunity to object and/or opt out, and based upon the lack of objections and opt-outs, appears to consent to the Settlement Agreement. After weighing the substantial, certain, and immediate benefits of this settlement against the uncertainty of trial and appeal, the parties believe that the proposed settlement is fair, reasonable, and adequate, and that it warrants the Court's final approval.

Therefore, Plaintiff respectfully requests that the Court grant final approval of the Class Action Settlement, and sign the proposed order and judgment filed concurrently with this motion.

Dated: August 28, 2024

Ronald A. Marron

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