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8 **SUPERIOR COURT OF CALIFORNIA**  
9 **COUNTY OF SANTA CLARA**  
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12 IAN DOUGLAS, individually, as a representative  
13 of the class, and on behalf of the general public,

14 Plaintiff,

15 vs.

16 DHI GROUP, INC., and DICE INC.,

17 Defendants.

Case No. 18CV331732

**ORDER RE: MOTION FOR  
PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT**

18 The above-entitled matter came on regularly for hearing on Friday, March 8, 2019, at  
19 9:00 a.m. in Department 5 (Complex Civil Litigation), the Honorable Thomas E. Kuhnle  
20 presiding. Having reviewed and considered the written submissions filed by the parties, and  
21 having listened carefully to arguments of counsel, the Court rules as follows:

22 **I. INTRODUCTION**

23 This is a putative class action brought under the Fair Credit Reporting Act ("FCRA").  
24 According to the allegations of the Class Action Complaint ("Complaint"), filed on July 26,  
25 2017, defendants DHI Group, Inc. and Dice Inc. (collectively, "Defendants") operate a web  
26 service called "Dice Open Web" that searches the internet and creates profiles on people based  
27 on information scraped from various sources, including social media sites. (Complaint, ¶ 10.)  
28 Defendants then assemble that information into a profile without making any effort to verify the

1 accuracy of the information. (*Ibid.*) The profiles are sold to recruiters and employers to use for  
2 evaluating job applicants. (*Id.* at ¶ 11.)

3 The Complaint sets forth the following counts: (1) Disseminating Consumer Reports  
4 Without a Permissible Purpose; (2) Failure to Obtain Certification of a Permissible Purpose;  
5 (3) Failure to Obtain Certification of Disclosure, Authorization, Adverse Action Procedures and  
6 Equal Employment Opportunity Laws; (4) Failure to Provide Summary of Consumer Rights;  
7 (5) Failure to Provide Notice to Users of FCRA Responsibilities; and (6) Failure to Provide  
8 Consumers' Full Files Upon Request.

9 The parties have reached a settlement. Plaintiff has filed a motion for preliminary  
10 approval of the settlement.

## 11 **II. LEGAL STANDARD**

12 Generally, "questions whether a settlement was fair and reasonable, whether notice to the  
13 class was adequate, whether certification of the class was proper, and whether the attorney fee  
14 award was proper are matters addressed to the trial court's broad discretion." (*Wershba v. Apple*  
15 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-235, citing *Dunk v. Ford Motor Co.* (1996) 48  
16 Cal.App.4th 1794.)

17 In determining whether a class settlement is fair, adequate and reasonable, the  
18 trial court should consider relevant factors, such as "the strength of plaintiffs'  
19 case, the risk, expense, complexity and likely duration of further litigation, the  
20 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."

21 (*Wershba v. Apple Computer, Inc., supra*, 91 Cal.App.4th at pp. 244-245, citing *Dunk, supra*, 48  
22 Cal.App.4th at p. 1801 and *Officers for Justice v. Civil Service Com'n, etc.* (9th Cir. 1982) 688  
23 F.2d 615, 624.)

24 "The list of factors is not exclusive and the court is free to engage in a balancing and  
25 weighing of factors depending on the circumstances of each case." (*Wershba v. Apple*  
26 *Computer, Inc., supra*, 91 Cal.App.4th at p. 245.) The court must examine the "proposed  
27 settlement agreement to the extent necessary to reach a reasoned judgment that the agreement is  
28 not the product of fraud or overreaching by, or collusion between, the negotiating parties, and

1 that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” (*Ibid.*,  
2 quoting *Dunk, supra*, 48 Cal.App.4th at p. 1801 and *Officers for Justice v. Civil Service Com’n*,  
3 *etc., supra*, 688 F.2d at p. 625, internal quotation marks omitted.)

4 The burden is on the proponent of the settlement to show that it is fair and  
5 reasonable. However “a presumption of fairness exists where: (1) the settlement  
6 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.”

7 (*Wershba v. Apple Computer, Inc., supra*, 91 Cal.App.4th at p. 245, citing *Dunk, supra*, 48  
8 Cal.App.4th at p. 1802.)

### 9 III. DISCUSSION

#### 10 A. Provisions of the Settlement

11 The case has been settled on behalf of the following class:

12 All individuals about whom Defendants created an Open Web profile and (a) for  
13 whom a third party used a feature on the Open Web profile to communicate with  
14 the individual, or (b) the individual requested deletion of their Open Web profile.  
The Class Period is from July 26, 2012 to the date the Class List is prepared.

15 (Declaration of E. Michelle Drake in Support of Unopposed Motion for Preliminary Approval of  
16 Class Action Settlement (“Drake Decl.”), Ex. A (“Settlement Agreement”), ¶ 3.1.)

17 Pursuant to the settlement, Defendant will pay a non-reversionary amount of \$1,000,000.  
18 (See Settlement Agreement, ¶ 1.27.) This amount includes an incentive award of \$5,000 for  
19 Plaintiff, up to \$333,333 in attorneys’ fees, costs of \$32,000, and administration expenses of  
20 \$75,000. The settlement payments will be distributed evenly to class members, with a maximum  
21 individual recovery of \$500. (Settlement Agreement, ¶¶ 7.2.1-7.2.2.) However, if enforcing the  
22 \$500 cap results in more than 25% of the settlement payment (\$250,000) being donated to the cy  
23 pres recipient (Public Justice), the maximum individual benefit payment will be increased until  
24 the cy pres donation is equal to 25% of the total settlement payment. (Settlement Agreement,  
25 ¶ 7.2.2.) The settlement also includes several non-monetary benefits in the form of revised  
26 business practices. (Settlement Agreement, ¶ 8.)

27 To receive payment, a class member must file a claim form. The claim form has space to  
28 write in the class member’s name and mailing address. The form also has a box to check if the

1 class member believes his or her statutory rights were violated. (See Settlement Agreement,  
2 Ex. 4.) The Court initially had two concerns about the procedures required for class members to  
3 receive compensation. First, it was not apparent why class members should be required to file a  
4 claim form. Counsel explained, however, that Defendant has only the email address for class  
5 members, and thus it needs physical addresses to mail checks to class members. Second, the  
6 Court was concerned that a non-attorney class member would be unlikely to know if his or her  
7 “statutory rights” were violated. The parties agreed this requirement could be deleted. The  
8 Court’s two concerns, therefore, have been adequately addressed.

9 **B. Fairness of the Settlement**

10 Plaintiff states the settlement was reached after the parties obtained discovery that shed  
11 light on Defendants’ defenses to liability and class certification. The parties also engaged in a  
12 full-day mediation session with an experienced mediator. Overall, the Court finds the settlement  
13 is fair. It provides for some recovery for each class member and eliminates the risk and expense  
14 of further litigation.

15 **C. Incentive Award, Fees, and Costs**

16 Plaintiff seeks a class representative incentive award of \$5,000 for class representative  
17 Ian Douglas.

18 The rationale for making enhancement or incentive awards to named plaintiffs is  
19 that they should be compensated for the expense or risk they have incurred in  
20 conferring a benefit on other members of the class. An incentive award is  
21 appropriate if it is necessary to induce an individual to participate in the suit.  
22 Criteria courts may consider in determining whether to make an incentive award  
23 include: 1) the risk to the class representative in commencing suit, both financial  
24 and otherwise; 2) the notoriety and personal difficulties encountered by the class  
25 representative; 3) the amount of time and effort spent by the class representative;  
26 4) the duration of the litigation and; 5) the personal benefit (or lack thereof)  
27 enjoyed by the class representative as a result of the litigation. These “incentive  
28 awards” to class representatives must not be disproportionate to the amount of  
time and energy expended in pursuit of the lawsuit.

25 (*Cellphone Termination Fee Cases* (2010) 186 Cal. App. 4th 1380, 1394-1395, quotation marks,  
26 brackets, ellipses, and citations omitted.)

27 Prior to final approval of the settlement, the class representative must submit a  
28 declaration specifically detailing his participation in this action.

1           The Court also has an independent right and responsibility to review the requested  
2 attorneys' fees and only award so much as it determines reasonable. (See *Garabedian v. Los*  
3 *Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) In the newly filed  
4 supplemental declaration, Plaintiff's counsel states the parties have reached an agreement that  
5 Plaintiff's counsel will seek attorneys' fees in an amount not to exceed \$333,333 in addition to  
6 reasonable costs. Plaintiff's counsel should submit lodestar information (including hourly rates  
7 and hours worked) prior to the final approval hearing so the Court can compare the lodestar  
8 information with the requested fees. Plaintiff's counsel must also provide information  
9 supporting any request for actual incurred costs.

10           **D.       Conditional Certification of Class**

11           Plaintiff requests the putative class be conditionally certified for purposes of the  
12 settlement. Rule 3.769(d) of the California Rules of Court states that "[t]he court may make an  
13 order approving or denying certification of a provisional settlement class after [a] preliminary  
14 settlement hearing." California Code of Civil Procedure Section 382 authorizes certification of a  
15 class "when the question is one of a common or general interest, of many persons, or when the  
16 parties are numerous, and it is impracticable to bring them all before the court . . . ." As  
17 interpreted by the California Supreme Court, Section 382 requires: (1) an ascertainable class; and  
18 (2) a well-defined community of interest among the class members. (*Sav-On Drug Stores, Inc. v.*  
19 *Superior Court* (2004) 34 Cal.4th 319, 326.)

20           The "community-of-interest" requirement encompasses three factors: (1) predominant  
21 questions of law or fact; (2) class representatives with claims or defenses typical of the class;  
22 and, (3) class representatives who can adequately represent the class. (*Id.* at p. 326.) "Other  
23 relevant considerations include the probability that each class member will come forward  
24 ultimately to prove his or her separate claim to a portion of the total recovery and whether the  
25 class approach would actually serve to deter and redress alleged wrongdoing." (*Linder v. Thrifty*  
26 *Oil Co.* (2000) 23 Cal.4th 429, 435.) The plaintiff has the burden of establishing that class  
27 treatment will yield "substantial benefits" to both "the litigants and to the court." (*Blue Chip*  
28 *Stamps v. Superior Court* (1976) 18 Cal.3d 381, 385.)

1 As explained by the California Supreme Court,

2 The certification question is essentially a procedural one that does not ask whether  
3 an action is legally or factually meritorious. A trial court ruling on a certification  
4 motion determines whether the issues which may be jointly tried, when compared  
5 with those requiring separate adjudication, are so numerous or substantial that the  
6 maintenance of a class action would be advantageous to the judicial process and  
7 to the litigants.

8 (*Sav-On Drug Stores, Inc. v. Superior Court, supra*, 34 Cal.4th at p. 326, internal quotation  
9 marks, ellipses, and citations omitted.)

10 Class members can be ascertained from Defendants' records. There are common issues  
11 regarding whether Defendants' Open Web Profiles are consumer reports under the FCRA,  
12 whether Defendants' acted willfully, and the amount of damages. No issue has been raised  
13 regarding the typicality or adequacy of Plaintiff as class representative. In sum, the Court finds  
14 the proposed class should be conditionally certified.

15 **E. Class Notice**


16 The content of a class notice is subject to court approval. "If the court has certified the  
17 action as a class action, notice of the final approval hearing must be given to the class members  
18 in the manner specified by the court." (Cal. Rules of Court, rule 3.769(f).)

19 The parties will provide both an email notice and a long form notice. The parties have  
20 submitted revised notices. The revised notices generally comply with the requirements for class  
21 notice. (See Settlement Agreement, Exs. 2 and 5.) They provide basic information about the  
22 settlement, including the settlement terms, and procedures to object or request exclusion. The  
23 notices are approved.

24 **F. Conclusion**

25 The motion for preliminary approval of class settlement is GRANTED. The final  
26 approval hearing is set for August 2, 2019, at 9:00 a.m. in Department 5.

27 Dated: March 11, 2019

28   
Thomas E. Kuhnle  
Judge of the Superior Court