SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU
PRESENT: HON. LISA A. CAIRO, J.S.C.

TRIAL/IAS PART 19

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DANIEL OHEBSHALOM, THOMAS FAN, MATTHEW KIMOTO and CLINTON BROWN, individually and on behalf of all others similarly situated,

Plaintiffs,

-against-

DAPPER LABS, INC,

Defendant.

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DECISION AND ORDER ON MOTION

INDEX No. 615987/2025
MOTION Seq. No. 003

The following papers were read on this motion	DOCS NUMBERED
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Plaintiffs Daniel Ohebshalom, Thomas Fan, Matthew Kimoto, and Clinton Brown, individually and on behalf of all others similarly situated move by notice of motion for final approval of a class action settlement with Defendant Dapper Labs, Inc.

BACKGROUND

Plaintiffs commenced this class action suit alleging violations of the U.S. Video Privacy Protection Act, 18 U.S.C. § 2710, (the "VPPA") as against the Defendant. Following mediation before Hon. Wayne R. Anderson (Ret.), the parties entered into a Class Action Settlement Agreement (the Agreement), which was preliminarily approved by this court on December 22, 2025.

The Agreement, executed on August 4, 2025, establishes a gross settlement fund of $5,000,000.00 inclusive of (1) cash payments as explained below, (2) settlement administration expenses in an amount not to exceed $150,000.00, (3) the fee award to class counsel, not to exceed one-third of the gross settlement amount, or $1,666,666.67 less costs, and (4) service awards to the four class representatives of $5,000.00 each. After deductions for items 2-4, the cash benefit cap available to the class is $3,331,33.33. In order to obtain a cash payment of $5.00, a class member must timely submit a claim form to the claims administrator, Epiq, attesting that they had an active account to one of the Defendant's websites during the class period of June 15, 2020 to January 30, 2025. Those not wishing to be bound by the settlement must exclude themselves by letter to the settlement administrator. The Settlement Agreement provides that in the event that the number of qualified claimants exceed 800,000, the cap benefit cap would be exceeded, and each such claimant would receive a pro rata share of the settlement. The Agreement is silent as to what happens to undistributed amounts if the cash benefit cap is not exhausted by approved claims. Ostensibly, those funds remain with the Defendant as opposed to a charitable (cy pres) or other distribution.

As to "prospective relief" the Agreement provides that "Dapper Labs, Inc. agrees to cease operation of the Meta Pixel, Google Pixel, the Microsoft Bing Pixel, the SnapChat Pixel, the X Pixel, the Reddit Pixel, and the TikTok Pixel on any pages on its websites where it would capture the title of a video purchased or viewed, unless and until the VPPA is amended, repealed, or otherwise invalidated by judicial decision as applied to the use of web site pixel technology or video games generally, or until Dapper Labs, Inc. obtains VPPA-compliant consent for the disclosure of such video titles to any third parties."

In support of the instant motion, Plaintiff submits an affirmation of a claims administrator representative, who indicates that 1,246,840 identified class members received email notices representing 89.2% of the identified settlement class. As of the date of the affirmation, 32,930 claim forms had been received, which number has since been updated to 64,325.

On the final day that objections could be filed, the court received an objection from a settlement class member. The Objector raises three primary arguments against the settlement. First, Objector asserts that because claims are resolved on a claims-made basis, actual payouts to the class are minimized. Objector contends that a low claims rate of 1-5% represents distribution of only a small fraction of the gross settlement fund. Further, Objector asserts that the nominal payout ($5.00) per approved claim fails to account for the varying scope of engagement or participation with the platforms among class members. Additionally, Objector asserts that the counsel fee structure is disproportionate to the class benefit and suggests that the settlement primarily benefits counsel rather than the class. The court notes, however, the Objector's acknowledgement of the legal uncertainty of the claims "including whether the conduct at issue falls within the scope of the Video Privacy Protection Act."

DISCUSSION

"The Court may approve the settlement of a class action only if the proposed settlement is fair, adequate, reasonable and in the best interest of class members. (*Klein v. Robert's American Gourmet Food, Inc.*, 28 AD3d 63, 73 [2d Dept 2006]). Substantive fairness is determined by consideration of several factors, including "the likelihood that plaintiffs will succeed on the merits; the judgment of counsel; the presence of good faith bargaining; and complexity and nature of the issues of fact and law." (*Conolly v. Universal Am. Fin. Corp.*, 21 Misc. 3d 1109(A) [Sup. Ct. Westchester County 2008]; *see also Gordon v. Verizon Communications, Inc.*, 148 AD3d 146 [1st Dept 2017])

At the outset, as determined by the court's prior order, the Settlement Agreement is, on its face, fair and reasonable especially in light of the litigation risks and uncertainty as to damages sustained. The notice gives clear information concerning the process and impact of excluding oneself from the class in the event that a class member chose to seek individual relief. Additionally, unlike what has been seen in other circumstances, the injunction contained in the Agreement is not illusory and represents a benefit to the class and to future users.

However, the Objector raises valid concerns about payments to be made to class counsel. The attorneys' fees and expenses proposed by counsel are $1,666,666.67. In support of the fee application, class counsel asserts that it has expended 1632.6 hours at a blended hourly rate of $730.36, providing a base lodestar amount of $1,192,218.38 as a basis of a cross-check against the amount proposed.[1] Counsel indicates that it has spent significant time on this case as well as investigation in the similar matter captions *Fan v. NBA Properties, Inc.*, Case 3:23-05069 (ND Cal.). Counsel does not make clear whether the recited 1632 hours is restricted to this case and does not disclose the terms of the settlement in the *Fan* action. At hearing on the motion, class counsel noted that it undertook a substantial risk of non-payment in bringing this action under the VPPA, which has not been fully litigated to date.

> "The amount awarded in attorney's fees must be based on the 'reasonable value of legal services rendered' (CPLR 909). The burden of showing the reasonableness of the fee lies with the claimant (*see Matter of Karp [Cooper]*, 145 A.D.2d 208, 216), and '[t]he determination of what constitutes a reasonable fee involves extensive consideration of the nature and value of the services rendered by the plaintiffs' attorneys' (*Friar v. Vanguard Holding Corp.*, 125 A.D.2d 444, 447 [1986]). Although the claimant is not required to tender contemporaneously- maintained time records, 'the court will usually, and especially in a matter involving a large fee, be presented with an objective and detailed breakdown by the attorney of the time and labor expended, together with other factors he or she feels supports the fee requested' (*Matter of Karp [Cooper]*, *supra* at 216). Otherwise stated, '[t]he valuation process requires definite information, not only as to the way in which the time was spent (discovery, oral argument, negotiation, etc.), but also as to the experience and standing of the various lawyers performing each task (senior partner, junior partner, associate, etc.)' (*Washington Fed. Sav. & Loan Assoc. v. Village Mall Townhouses, Inc.*, 90 Misc.2d 227, 230–231 [Sup. Ct. Queens County, Kassoff, J., 1977]; *see also Sheridan v. Police Pension Fund*, Art. 2 of City of N.Y., 76 AD2d 800 [1980])."

(*Klein*, 28 AD3d 63; *see also Goldberger v. Integrated Resources*, 209 F.3d 43, 50 [2d Cir. 2000] [setting forth factors to be considered in ascertaining reasonableness of fee regardless of method of calculation]).

In *Pearson v. NBTY, Inc.*, 772 F.3d 778 [7th Cir. 2014], cited by the Objector, the court rejected a nationwide settlement where claims based class recovery would amount to $865,284.00 while the cy pres award would be $1.13million to a medical research foundation and counsel fees were sought in the amount of $1.93million. With respect to counsel fees, the court articulated that "the ratio that is relevant . . . is the ratio of (1) the fee to (2) the fee plus what the class members received." (*Pearson*, 772 F.3d at 781 [quoting *Redman v. RadioShack Corp.*, 768 F.3d 622, 630

[1] When the lodestar method is used, the base lodestar is often increased by applying a multiplier based on "less objective factors, such as the risk of the litigation and the performance of the attorneys." (*Goldberger v. Integrated Resources, Inc.*, 209 F.3d 43, 47 [2d Cir. 2000]).

[7th Cir. 2014]]). The court explained that "[b]asing the award of attorneys' fees on this ratio, which shows how the aggregated value of the settlement is being split between class counsel and the class, give class counsel and incentive to design the claims process in such a way as will maximize the settlement benefits actually received by the class, rather than to connive with the defendant in formulating claims-filing procedures that discourage filing and so reduce the benefit to the class." (*Pearson*, 772 F.3d at 781[finding attorney's fees representing 69 percent of the ratio to be "outlandish."]).

The Second Circuit took a broader view by considering the "entire fund" created by the efforts of class counsel, including any cy pres portion in *Masters v. Wilhelmina Model Agency, Inc.*, 473 F3d. 423 [2d Cir. 2007]. The *Masters* court, acknowledging a split in authority among the circuits, announced that "[a]n allocation of fees should therefore be awarded on the basis of the total funds made available, whether claimed or not." (*Masters*, 473 F.3d at 437).

Here, claims made are far less than overall number of class members as is easily discerned from the number of claims filed measured against the number of notices sent. Although the small participation rate may have been anticipated by counsel, it was not anticipated by the court at the time of preliminary approval. Utilizing the *Pearson* ratio analysis set out above, fees to be awarded to class counsel in this matter amount to 83.82% - a ratio that court would unquestionably describe as "outlandish."

Ultimately, as it is the province of the courts in New York to determine the reasonableness of any counsel fee application, and given that the hours reported (1632.6) overlap with time spent in the *Fan* action, for which investigation and corresponding legal work were undoubtedly extensive, the court finds that the reasonable amount of attorneys' fees and expenses to be awarded here are $1,300,000.00. (*See McDaniel v. County of Schenectady*, 595 F.3d 411 [2d Cir. 2010] [affirming District Court's award of counsel fees less than those requested based upon consideration of the appropriate factors]).

For the foregoing reasons, it is hereby

ORDERED, that the motion is **granted** to the extent that the class-action settlement is approved; and it is further

ORDERED, that class counsel are awarded fees in the amount of $1,300,000.00 for attorneys' fees and expenses.

The foregoing constitutes the decision and order of this court. All applications not specifically addressed herein are denied.

Dated: Mineola, NY
April 30, 2026

ENTER: Lisa A Cairo

HON. LISA A. CAIRO, J. S. C.