

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

HEATHER MCCLAIN,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 23-cv-1168-DWD
)	
DX ENTERPRISES, INC.,)	
)	
Defendant.)	

PRELIMINARY APPROVAL ORDER

DUGAN, District Judge:

This matter having come before the Court on Plaintiff’s Unopposed Motion for Preliminary Approval of Class Action Settlement (“the Motion”) (Doc. 56), the Court having reviewed and considered the Motion, the Class Action Settlement Agreement (“Settlement” or “Settlement Agreement”) (Doc. 56-1), including all attachments to the Settlement Agreement, and the Court being fully advised in the premises, IT IS HEREBY ORDERED:

1. Capitalized terms used in this Order are defined in the Parties’ Settlement Agreement.
2. The Settlement is preliminarily approved as fair, reasonable, and adequate. The Settlement Agreement was negotiated at arm’s-length between counsel for the Parties who are experienced in class action litigation.
3. For settlement purposes only, the Court finds that the requirements for a class action under Federal Rule of Civil Procedure 23 are preliminarily satisfied,

including numerosity, commonality and predominance, adequacy, and appropriateness of class treatment.

4. For settlement purposes only, the Court preliminarily certifies the following Settlement Class and Subclass:

Settlement Class:

All persons who had their biometrics collected and/or biometric information and/or data collected, captured, received converted, stored, obtained, shared, taken, used, disclosed or disseminated by Defendant in Illinois between February 27, 2018 to the date of preliminary approval without first executing a written release. Excluded from the Settlement Class are: (1) any Judge or Magistrate presiding over this Action and members of their families; (2) the Defendant, Defendant's subsidiaries, parent companies, successors, predecessors, and any entity in which the Defendant or its parents have a controlling interest; (3) persons who properly execute and file a timely request for exclusion from the Settlement Class; and (4) the legal representatives, successors or assigns of any such excluded person.

Defendant estimates there are 586 Settlement Class Members.

Settlement Subclass:

The Settlement Subclass will be defined to consist of only those members of the Settlement Class who were hired by DX Enterprises, Inc. more than one time during the period of February 27, 2018 to the date of preliminary approval and who had their biometrics collected and/or biometric information and/or data collected, captured, received, converted, stored, obtained, shared, taken, used, disclosed, or disseminated by Defendant in Illinois without first executing a written release.

Defendant estimates that there are 86 Subclass Members.

5. The Parties agree that certification of the Settlement Class is a conditional certification for settlement purposes only, and that Defendant retains its right to object to

certification of this Action, or any other class action, under any applicable rule, statute, law, or provision.

6. For settlement purposes only, the Court appoints Heather McClaine as the Settlement Class Representative.

7. For settlement purposes only, the Court appoints the following attorney as Settlement Class Counsel:

The Garfinkel Group, LLC
Max P. Barack
max@garfinkelgroup.com
701 N. Milwaukee Avenue
The CIVITAS
Chicago, Illinois 60642
Telephone: (312) 736-7991

8. The Court approves the Notice of Class Action Settlement (“Notice”) attached as Exhibit 1 to the Settlement Agreement and orders distribution of the Notice to Settlement Class Members as described in the Settlement Agreement. The Notice and the methods of distribution satisfy due process, the requirements of Federal Rule of Civil Procedure 23, and constitute the best notice practicable under the circumstances.

9. The Court appoints Simpluris as the Settlement Administrator to perform all duties described in the Settlement Agreement or ordered by this Court.

10. Any Settlement Class Member may request to be excluded from the Settlement by submitting a written request for exclusion to the Settlement Administrator as described in the Notice within 30 days from the date of initial Notice distribution.

11. Any Settlement Class Member who excludes himself or herself from the Settlement will not be entitled to any recovery under the Settlement and will not be bound by the Settlement or have any right to object, appeal, or comment on it.

12. Any Settlement Class Member who does not request to be excluded from the Settlement may object to the Settlement by submitting a written statement to the Settlement Administrator as described in the Notice within 30 days from the date of initial Notice distribution.

13. Settlement Class Counsel shall file a motion for final approval of the settlement and for attorneys' fees, litigation costs, settlement administration costs, and the Class Representative's Incentive Award ("Fee Petition") at least seven days prior to the Final Approval Hearing.

14. The Court schedules a Final Approval Hearing for April 15, 2025, at 10:00 a.m., which will be conducted in person, at the United States District Court for the Southern District of Illinois, East St. Louis, Illinois, to consider, among other things, (1) whether to finally approve the Settlement; (2) whether to approve Settlement Class Counsel's request for attorney fees and litigation costs; (3) whether to approve the Class Representative's request for an Incentive Award; and (4) whether to approve the Settlement Administrator's costs.

15. The Final Approval Hearing may be postponed, adjourned, transferred, or continued by order of the Court without further notice to Settlement Class Members. At or following the Final Approval Hearing, the Court may enter a judgment approving the

Settlement and entering a Final Approval Order in accordance with the Settlement that adjudicates the rights of all Settlement Class Members.

16. For clarity, the deadlines set forth above and in the Settlement Agreement are anticipated to be as follows:

- A. Class List to Administrator: January 21, 2025;
- B. Notice distributed by: February 4, 2025;
- C. Exclusion deadline: March 6, 2025;
- D. Objection deadline: March 6, 2025;
- E. Fee Petition filing: April 8, 2025;
- F. Final Approval Motion filing: April 8, 2025; and
- G. Final Approval Hearing: April 15, 2025, at 10:00 a.m.

SO ORDERED.

Dated: January 7, 2025



DAVID W. DUGAN
United States District Judge