SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

25CV026746: POLK vs AMERICAN WELL CORP.
07/31/2026 Hearing on Motion for Preliminary Approval of Settlement in Department 8A

Tentative Ruling

NO APPEARANCE REQUIRED

Plaintiff Virginia Polk's ("Plaintiff") motion for preliminary approval of class and representative action settlement is UNOPPOSED and GRANTED as follows.

Overview

On November 5, 2025, Plaintiff filed this class action lawsuit against Defendant American Well Corp. ("Defendant") alleging that Defendant aided, employed, agreed with, and otherwise enabled a third party, Heap Inc. ("Heap"), to intercept Plaintiff's and Class Members' communications while using Defendant's Website, iOS App, and/or Android App (the "Platform"), including communications containing personally identifiable information ("PII") and/or personal health information ("PHI"). (See Compl.) Plaintiff alleges causes of action for: (1) violation of the Federal Wiretap Act (18 U.S.C. §2510, *et seq.*); (2) violation of the California Invasion of Privacy Act (Pen. Code, § 631); (3) violation of the California Invasion of Privacy Act (Pen. Code, § 632); (4) violation of the California Confidentiality of Medical Information Act (Civ. Code, § 56.10); (5) invasion of privacy under the California Constitution; and (6) intrusion upon seclusion.

On October 29, 2025, Parties attended a full-day mediation with Jill R. Sperber, Esq. following which the Parties agreed to the material terms of the Settlement Agreement (Fraietta Decl., ¶ 3.) The Parties continued negotiation of the terms, and fully executed the Settlement Agreement on December 16, 2025. (*Id*. at Exh. 1 ("Agreement").)

Prior to mediation, the Parties exchanged informal discovery, including the exchange of information regarding issues such as the size and scope of the putative class, which includes approximately 252,478 persons, and certain facts related to the strength of Plaintiff's claims and Defendant's defenses. (Agreement, ¶ 2.)

On April 24, 2026, the hearing on this matter was continued for the following reasons:

> First, both the proposed order and the settlement agreement provide for a blanket injunction. The settlement agreement states:
>
> > Upon 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. 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. (Fraietta Decl. Ex. 1 at ¶ 3.2 [emphasis added].)

The Proposed Order states:

> Until otherwise ordered by the Court, the Court stays all proceedings in this Action other than proceedings necessary to carry out or enforce the terms and conditions of the Settlement Agreement. Pending final determination of whether the Settlement should be approved, the Court bars and enjoins Plaintiff, and all other members of the Settlement Class, from commencing or prosecuting any and all of the Released Claims against the Released Parties. (Proposed Order ¶ 15.)

Blanket injunctions such as the one quoted above are generally not appropriate. "[A]n injunction against parallel litigation is rarely necessary: **preclusion is that injunction**." (4 Newberg and Rubenstein on Class Actions (6th ed. June 2025 update) § 13:19 [emphasis added].) 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 and Rubenstein 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 Parties present no circumstances that demonstrate such an extraordinary injunction is appropriate here. To the contrary, the supporting memorandum of points and authorities states: "The Parties are unaware of any impact this settlement will have on pending litigation." (MPA 16:2-3.) Consequently, the Parties ask for a broad injunction with an unknown impact. The Court will not grant this request. The lift of the injunction on individuals who file valid requests for exclusion is not enough to dispel the issues created by the injunction. **Accordingly, Plaintiff is directed to submit an amended settlement agreement and an amended proposed order that omits the word "enjoined" from the documents.** If the Parties believe there is a justification for the injunction here, they may alternatively file a response to state their position.

Second, the Court finds the release as to absent class members is impermissibly overbroad. (*See Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 538-539 ["Releases must be appropriately tethered to the complaint's factual allegations;" "[A] court **cannot** release claims that are outside the scope of the allegations of the complaint. (Emphasis added.)"].) The settlement agreement provides, in relevant parts:

> **1.24** "**Released Claims**" means any and all actual, potential, filed, *known or Unknown Claims*, fixed or contingent, claimed or unclaimed, suspected or unsuspected, claims, demands, liabilities, rights, causes of action, contracts or agreements, extra contractual claims, damages, punitive, exemplary or multiplied damages, expenses, costs, attorneys' fees and or obligations, whether in law or in equity, accrued or un-accrued, direct, individual or representative, of every nature and description whatsoever, whether based on 18 U.S.C. § 2510, et seq. (the "Federal Wiretap Act"), Cal. Penal Code §§ 631-632 (the "California Invasion of Privacy Act" or "CIPA"), Cal. Civil Code § 56.10 (the "California Confidentiality of Medical Information Act" or "CMIA"), or other state, federal, local, statutory or common law or any other law, rule or regulation, against the Released Parties, or any of them, arising out of any facts, transactions, events, matters, occurrences, acts, disclosures, statements, representations, omissions or failures to act regarding the alleged disclosure, use, interception or transfer of information of or related to the Settlement Class Members through use of the Heap API, or other tracking, analytics and/or advertising technologies, *including without limitation all claims that were brought or could have been brought in the Action* by or on behalf of any and all Releasing Parties relating to, concerning, or arising out of the Defendant's use of the Heap API, and/or any other tracking, analytics and/or advertising technologies, or the allegations, facts, or circumstances

described in the Action. Nothing herein is intended to release any claims any governmental agency or governmental actor has against Defendant.

1.26 "**Releasing Parties**" means Plaintiff, those *Settlement Class Members who do not timely opt out of the Settlement Class*, and all of their respective present or past heirs, executors, estates, administrators, predecessors, successors, assigns, parent companies, subsidiaries, associates, affiliates, employers, employees, agents, consultants, independent contractors, directors, managing directors, officers, partners, principals, members, attorneys, accountants, financial and other advisors, underwriters, shareholders, lenders, auditors, investment advisors, legal representatives, successors in interest, assigns and companies, firms, trusts, and corporations.

1.33 "**Unknown Claims**" means claims that could have been raised in the Action and that any or all of the Releasing Parties do not know or suspect to exist, which, if known by him or her, might affect his or her agreement to release the Released Parties or the Released Claims or might affect his or her decision to agree, object or not to object to the Settlement. Upon the Effective Date, the *Releasing Parties* shall be deemed to have, and shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of § 1542 of the California Civil Code, which provides as follows:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Upon the Effective Date, the Releasing Parties also shall be deemed to have, and shall have, waived any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, or the law of any jurisdiction outside of the United States, which is similar, comparable or equivalent to § 1542 of the California Civil Code. The Releasing Parties acknowledge that they may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of this release, but that it is their intention to finally and forever settle and release the

> > Released Claims, notwithstanding any Unknown Claims they may have, as that term is defined in this Paragraph. The Parties agree that the release of Unknown Claims is a material term of this Settlement Agreement. (Fraietta Decl. Ex. 1 [italics emphasis added, all other emphasis in original.)
>
> The Court is inclined to conclude that the release definitions quoted above are confusing, overbroad, and fail to comport with the requirements of *Amaro*. Further, the section 1542 waiver applicable to the Settlement Class Members is not appropriate. Plaintiff appears to acknowledge that a 1542 waiver is generally not appropriate for class members but attempts to justify it in this instance because "this term provided Defendant with a finality to the liability associated with Defendant's use of the Heap API, or other tracking, analytics and/or advertising technologies, and thereby enabled Class Counsel to negotiate more substantial relief on behalf of the Settlement Class." (MPA 10:20-24.) Plaintiff further contends, "[i]t was appropriate to provide a § 1542 release as to absent Settlement Class Members here, where the § 1542 release is specifically limited to claims "regarding the alleged disclosure, use, interception or transfer of information of or related to the Settlement Class Members through use of the Heap API, or other tracking, analytics and/or advertising technologies." (*Id.* at 10:24-11:2.) The Court is not persuaded – based on the language of paragraph 1.33 in the agreement – that the 1542 waiver is limited. Nor does Plaintiff's contention that it obtained a larger settlement sum for the 1542 waiver empower the Court to approve an impermissibly overbroad release in contravention of *Amaro*.
>
> The Court encourages the Parties to streamline and simplify the release to avoid confusion and comply with *Amaro*. The Parties should also consider whether separate releases for the named Plaintiff and the Settlement Class Members would be clearer. If the Parties maintain that the release language and definitions are appropriate as written, the Parties must support their position with citation to relevant authority. (4/23/26 Order [emphasis in original].)

On May 22, 2026, Plaintiff's counsel filed a supplemental declaration, attaching an Amended Settlement Agreement ("Amended Agreement"), which the Court considers in its ruling herein. (Suppl. Fraietta Decl., ¶ 2, Exh. 1 ["Amended Agreement"].) The Parties have sufficiently addressed the issues in the Court's prior order. (*Compare* Agreement, ¶¶ 1.24, 1.26, 1.33, 3.2 *with* Amended Agreement, ¶¶ 1.24, 1.25, 1.26, 1.33, 3.2-3.4.)

The Parties entered into a written settlement agreement and now move for preliminary approval of the class and representative settlement. This ruling incorporates by reference the definitions in the Agreement and Amended Agreement and all capitalized terms defined therein shall have the same meaning in this ruling as set forth therein.

Settlement Class Certification

Plaintiff moves to certify the following settlement Class:

> [A]ll Persons in the United States who used the appointment booking tool on the LiveHealth Online website (livehealthonline.com), the LiveHealth Online iOS App (available at https://apps.apple.com/us/app/livehealth-online-mobile/id597917484), or the LiveHealth Online Android App (available at https://play.google.com/store/apps/details?id=com.americanwell.android.member.wellpoint), between October 2024 and August 2025. (Amended Agreement, ¶ 1.30.)

Excluded from the Settlement Class are: (1) any judge 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 and their current or former officers, directors, agents, attorneys, and employees; (3) persons who properly execute and file a timely request for exclusion from the class; and (4) the legal representatives, successors or assigns of any such excluded persons. Based on Defendant's records, there are approximately 252,478 Persons in the Settlement Class. (*Ibid.*)

The Parties stipulated to certification for settlement purposes. (*Id.* at ¶ 7.2.) The Court finds, based on the moving papers, that Plaintiff has established the requisites for class certification. Accordingly, the Court preliminarily certifies the proposed class for settlement purposes only.

Class Representative

Plaintiff is preliminarily appointed as Class Representative for settlement purposes only.

Class Counsel

The Court preliminarily appoints Philip L. Fraietta of Bursor & Fisher, P.A. and Scott R. Drury of Drury Legal, LLC as Class Counsel for settlement purposes only.

Settlement Administrator

The Court approves Simpluris as Settlement Administrator.

Fair, Adequate, and Reasonable Settlement

The Court must find a settlement is "fair, adequate, and reasonable" before approving a class action settlement. (*Wershba v. Apple Computer* (2001) 91 Cal.App.4th 224, 244-245.) The trial court has broad discretion to determine whether a proposed settlement in a class action is fair, adequate, and reasonable. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) In making its fairness determination, the Court considers the strength of the Plaintiff's case, the risk, expenses, 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 state of the proceedings, and the experience and views of counsel. (*Id.* at p. 1801.) In approving a class action settlement, the Court must "satisfy itself that the class settlement is within the 'ballpark' of reasonableness." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.)

This is a non-reversionary, opt out settlement. Defendant will pay into an Escrow Account a Settlement Fund in the total amount of $2,037,751.46. (Amended Agreement, ¶¶ 1.11, 1.32, 2.1.) The Settlement Administrator shall pay Settlement Administration Expenses from the Settlement Fund. (*Id*. at ¶¶ 1.28, 1.32.)

The following will be paid out of the Settlement Fund: (1) a service payment to Plaintiff of not more than $5,000; (2) attorneys' fees, costs, and expenses, in an amount not to exceed 33.33% of the Settlement Fund (estimated to be $679,250.48)[1] to Class Counsel; (3) settlement administration costs not to exceed $62,138, absent good cause; and (4) Approved Claims made by Settlement Class Members. (*Id*. at ¶ 1.27, 1.32, 2.1, 8.1, 8.4; Nelson Decl., ¶ 19.)

After Preliminary Approval, Defendant will produce an electronic list from its records that includes the names, and to the extent known, the email addresses and last known U.S. Mail addresses belonging to Persons within the Settlement Class. (Amended Agreement, ¶ 4.1(a).) The Settlement Administrator will send Notice via email 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*. at ¶ 4.1(b), Exh. B ("Email Notice").) In the event the second email attempt fails, or in the event that a known email address is not available for a Class Member, then the Settlement Administrator will send those Class Members Notice by First Class U.S. Mail. (*Ibid*., Exh. C ("Mail Notice").) Notice shall be provided on a website at www.livehealthonlinesettlement.com which shall be administered and maintained by the Settlement Administrator and shall include the ability to file Claim Forms on-line. (*Id*. at ¶ 4.1(e), Exh. D ("Website Notice".) Class Members have 45 days to respond to the Class Notice. (*Id*. at ¶ 1.19.)

To the extent that any checks issued to a Settlement Class Member are not cashed within one hundred eighty (180) days after the date of issuance, such uncashed check funds shall be redistributed on a *pro rata* basis (after first deducting any necessary Settlement Administration Expenses from such uncashed check funds) to all Settlement Class Members who cashed checks during the initial distribution, but only to the extent each Settlement Class Member would receive at least $5.00 in any such secondary distribution and if otherwise feasible. (*Id*. at ¶ 2.1(d).) To the extent each Settlement Class Member would receive less than $5.00 in any such secondary distribution or if a secondary distribution would be otherwise infeasible, any uncashed check funds shall revert to a non-sectarian, not-for-profit organization, agreed upon by Class Counsel and Defendant and approved by the Court. (*Ibid*.)

Disposition

The Court preliminarily finds that all relevant factors support settlement approval. (*Dunk*, *supra*, 48 Cal.App.4th at p. 1802.) The papers demonstrate the settlement was reached after arms-length bargaining between the parties and was reached after sufficient discovery and negotiations, which allowed the Parties, and therefore, this Court, to act intelligently with respect to the settlement. Class Counsel conducted an investigation into the facts and law and issues in this case, including the exchange of informal discovery and the review of relevant information. The settlement appears to be within the "ballpark of reasonableness." (Fraietta Decl., ¶¶ 3-5.) Therefore, the motion is GRANTED.

The Court also approves the proposed Class Notice **subject to the Parties amending Email Notice, Mail Notice, and Website Notice to state that the final approval hearing will take place in Department 8A of the Sacramento Superior Court, located at 500 G Street, Sacramento, CA 95814 before being sent out/published.** The Notice shall be disseminated as provided in the Amended Agreement.

The Final Approval Hearing will take place on January 15, 2027, at 9:00 a.m., in Department 8A.

The Court will sign the Amended Proposed Order. **The Court will fill in the information at Paragraph 5 regarding the Final Approval Hearing.**

Plaintiff must include any request for attorneys' fees, costs, and the service award in the final approval motion, *not* a separately filed motion.

To request oral argument on this matter, you must call Department 8A at (916) 874-5754 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.)

If oral argument is requested, the parties may appear by Zoom with the links below:

To join by Zoom link – https://saccourt-ca-gov.zoomgov.com/j/16108301121
To join by phone dial (833) 568-8864 / ID: 16108301121

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

---

[1] Pursuant to the Amended Agreement, the Fee Award shall be payable within ten (10) days after entry of the Court's Final Judgment, subject to Class Counsel executing the Undertaking Regarding Attorneys' Fees and Costs (the "Undertaking"). (Agreement, ¶ 8.3, Exh. E.)

Hearing on Motion for Final Approval of Settlement is scheduled for 01/15/2027 at 09:00 AM in Department 8A at Tani G. Cantil-Sakauye Courthouse.