UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

# John Does 1-5, et al. v. Kaiser Foundation Health Plan, Inc., et al.

John Does 1-5 v. Kaiser · No. 23-cv-02865-EMC · Decided October 24, 2025

## SUMMARY

The United States District Court for the Northern District of California considers Plaintiffs' motion for preliminary approval of a proposed class action settlement concerning alleged interception of Kaiser members' online health-related information by third-party technologies. The court finds the settlement within the range of reasonableness but requires modifications to the settlement class definition and individualized opt-out procedures. The court continues the preliminary approval hearing and directs the parties and objectors to meet and confer and file supplemental papers.

## CASE DETAILS

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| COURT | United States District Court for the Northern District of California |
| WRITING FOR THE COURT | Edward M. Chen |
| JURISDICTION | United States District Court for the Northern District of California |
| DECIDED | October 24, 2025 |
| DOCKET | 23-cv-02865-EMC |
| DISPOSITION | remanded |
| PROCEDURAL POSTURE | Plaintiffs moved for preliminary approval of a class action settlement with Kaiser Foundation Health Plan, Inc. Objectors opposed approval, challenging the settlement-class definition, arbitration exclusions, mass opt-outs, notice, and allocation. The court found the settlement within the range of reasonableness but continued the preliminary-approval hearing pending specified modifications and further meet-and-confer proceedings. |
| STANDARD OF REVIEW | Under Federal Rule of Civil Procedure 23(e), a proposed class action settlement must be fair, reasonable, and adequate; the court applied the Rule 23(e)(2) factors and the Hanlon factors to determine whether the settlement fell within the range of reasonableness warranting notice. |
| PRECEDENTIAL VALUE | nonprecedential |

## TOPICS

class actions | civil procedure | medical records privacy | hipaa | remedies

## PRACTICE AREAS

class actions | privacy and data security | health law | civil procedure | settlement approval

## QUESTIONS PRESENTED

1. Whether the proposed class action settlement fell within the range of reasonableness under Federal Rule of Civil Procedure 23(e) such that preliminary approval and class notice were appropriate.
2. Whether the settlement-class definition should exclude only individuals who had demanded or initiated arbitration and remained on the arbitration track, rather than requiring payment of an arbitration filing fee.
3. Whether individuals who had previously demanded arbitration but subsequently joined state-court litigation should be included in the settlement class.
4. Whether class members should be permitted to opt out through mass or attorney-submitted opt-outs rather than individualized opt-out requests.
5. Whether California plan members should receive a different allocation because of allegedly stronger claims.

## HOLDINGS

1. The proposed settlement fell within the range of reasonableness under Rule 23(e), but the court did not grant preliminary approval immediately because approval was conditioned on modifications to the settlement-class definition and opt-out procedures.
2. The settlement-class definition should exclude individuals who demanded or initiated arbitration and remained on the arbitration track, but it should not require payment of the arbitration filing fee as a condition of exclusion.
3. Individuals who had demanded arbitration but subsequently abandoned arbitration and joined state-court litigation should not be categorically excluded from the settlement class on the basis of their prior arbitration activity.
4. The court rejected mass opt-outs and required individualized opt-out decisions, while permitting the parties and objectors to develop a reasonable process under which counsel could collect and transmit individualized opt-outs.

## KEY QUOTATIONS

> *"Under Federal Rule of Civil Procedure 23(e), a court may approve a proposed settlement of a class action if it is fair, reasonable, and adequate."* (at 3)

> *"Therefore, so long as the settlement class definition is modified so that exclusion extends only to those who have demanded or initiated arbitration and are still in the arbitration track, and not to those who are now in the state court litigation track, the Court would be inclined to grant preliminary approval."* (at 6)

> *“The Court sees no reason why the Arbitration Claimants may not act through their attorneys in executing those requests to opt out of the Class.”* (at 8)

### FACTUAL BACKGROUND

Plaintiffs alleged that third-party code embedded throughout Kaiser’s website and mobile applications intercepted members’ patient status, identifying information, medical research, choices, communications with medical providers, and other personally identifiable health information while in transit. After plaintiffs sought a preliminary injunction, Kaiser disabled, deleted, or modified several third-party technologies, migrated Dynatrace to an on-premises deployment, and implemented consent banners. The proposed settlement provided for a gross fund of $46 million, potentially increasing to $47.5 million, for approximately 13.1 million settlement-class members.

### PROCEDURAL HISTORY

Plaintiffs brought a putative class action alleging that Kaiser entities allowed third-party technologies to intercept members' online and mobile-app communications and health-related information. Plaintiffs reached a settlement with one Kaiser entity, KFHP, while stipulating to dismissal without prejudice of two other Kaiser entities, to convert to dismissal with prejudice upon final approval and entry of final judgment. The court considered plaintiffs' motion for preliminary approval, objections, briefing, and oral argument, and continued the hearing rather than granting preliminary approval outright.

### DISPOSITION

remanded

### REMAND INSTRUCTIONS

The parties and objectors were ordered to meet and confer regarding a reasonable process for individualized opt-outs and the opt-in process for persons excluded from the settlement class because they remained in arbitration. Supplemental papers addressing the results of the meet and confer, and any modifications to the settlement agreement or class notice, were due by November 13, 2025. The preliminary-approval hearing was continued to November 25, 2025.

### CASES CITED

- Hanlon v. Chrysler Corp., 150 F.3d 1011, 1026 (9th Cir. 1998)
- In re 23andMe, Inc. Customer Data Sec. Breach Litig., No. 24-md-03098-EMC, 2024 U.S. Dist. LEXIS 219622 (N.D. Cal. Dec. 4, 2024)
- In re CenturyLink Sales Pracs. & Sec. Litig., MDL No. 17-2795 (MJD/KMM), 2020 U.S. Dist. LEXIS 114110 (D. Minn. June 29, 2020)
- In re Google Assistant Priv. Litig., No. 5:19-cv-04286-BLF, 2025 U.S. Dist. LEXIS 28914 (N.D. Cal. Feb. 14, 2025)