

1 Michael W. Sobol (State Bar No. 194857)  
msobol@lchb.com  
2 David T. Rudolph (State Bar No. 233457)  
drudolph@lchb.com  
3 Melissa Gardner (State Bar No. 289096)  
mgardner@lchb.com  
4 LIEFF CABRASER HEIMANN & BERNSTEIN, LLP  
275 Battery Street, 29th Floor  
5 San Francisco, CA 94111-3339  
Telephone: 415.956.1000  
6 Facsimile: 415.956.1008

7 Rachel Geman  
rgeman@lchb.com  
8 Nicholas Diamand  
ndiamand@lchb.com  
9 LIEFF CABRASER HEIMANN & BERNSTEIN, LLP  
250 Hudson Street, 8th Floor  
10 New York, NY 10013-1413  
Telephone: 212.355.9500  
11 Facsimile: 212.355.9592

12 Hank Bates (State Bar No. 167688)  
hbates@cbplaw.com  
13 Allen Carney  
acarney@cbplaw.com  
14 David Slade  
dslade@cbplaw.com  
15 CARNEY BATES & PULLIAM, PLLC  
519 West 7<sup>th</sup> Street  
16 Little Rock, AR 72201  
Telephone: 501.312.8500  
17 Facsimile: 501.312.8505

18 *Attorneys for Plaintiffs and the Class*

19 **UNITED STATES DISTRICT COURT**  
20 **NORTHERN DISTRICT OF CALIFORNIA**

21  
22 MATTHEW CAMPBELL, MICHAEL  
HURLEY, on behalf of themselves and all  
23 others similarly situated,

24 Plaintiffs,

25 v.

26 FACEBOOK, INC.,

27 Defendant.  
28

Case No. 4:13-cv-05996-PJH

**PLAINTIFFS' NOTICE OF MOTION;  
MOTION FOR PRELIMINARY  
APPROVAL OF CLASS ACTION  
SETTLEMENT; AND MEMORANDUM  
OF POINTS AND AUTHORITIES**

Date: April 12, 2017  
Time: 9:00 a.m.  
Judge: Hon. Phyllis J. Hamilton  
Place: Courtroom 3, 3rd Floor

**NOTICE OF MOTION**

**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE** that on April 12, 2017, at 9:00 a.m., in the Courtroom of the Honorable Phyllis J. Hamilton, United States District Judge for the Northern District of California, Courtroom 3, 1301 Clay Street, Oakland, California, 94612, Plaintiffs Matthew Campbell and Michael Hurley will and hereby do move the Court, pursuant to Federal Rule of Civil Procedure 23, for an Order:

- A. Granting preliminary approval of the proposed Class Action Settlement Agreement (“Settlement”) entered into between the parties;<sup>1</sup>
- B. Certifying the Settlement Class as defined in the Settlement;
- C. Appointing Class Representatives Matthew Campbell and Michael Hurley as Settlement Class Representatives of the proposed Settlement Class, extending the class period for the injunctive-relief class previously certified by the Court;
- D. Appointing current class counsel Lieff Cabraser Heimann & Bernstein, LLP and Carney Bates & Pulliam, PLLC for the proposed Settlement Class;
- E. Staying all non-Settlement related proceedings in the above-captioned case (the “Action”) pending final approval of the Settlement; and
- F. Setting a Fairness Hearing and certain other dates in connection with the final approval of the Settlement.

This motion is based on this notice of motion and motion, the accompanying memorandum of points and authorities, the Settlement, including all exhibits thereto, the accompanying Joint Declaration of Class Counsel (“Joint Decl.”), the argument of counsel, all papers and records on file in this matter, and such other matters as the Court may consider.

---

<sup>1</sup> See Exhibit 1 to the Joint Declaration of Class Counsel (“Joint Declaration”).

1 Dated: March 1, 2017

Respectfully submitted,

2 CARNEY BATES & PULLIAM, PLLC

3  
4 By: /s/ Hank Bates

Hank Bates (State Bar No. 167688)

5 hbates@cbplaw.com

Allen Carney

6 acarney@cbplaw.com

David Slade

7 dslade@cbplaw.com

519 West 7th Street

8 Little Rock, AR 72201

Telephone: 501.312.8500

9 Facsimile: 501.312.8505

10 Michael W. Sobol

msobol@lchb.com

11 David T. Rudolph

drudolph@lchb.com

12 Melissa Gardner

mgardner@lchb.com

13 LIEFF CABRASER HEIMANN

& BERNSTEIN, LLP

14 275 Battery Street, 29th Floor

San Francisco, CA 94111-3339

15 Telephone: 415.956.1000

16 Facsimile: 415.956.1008

Rachel Geman

17 rgeman@lchb.com

Nicholas Diamand

18 ndiamand@lchb.com

LIEFF CABRASER HEIMANN

19 & BERNSTEIN, LLP

250 Hudson Street, 8th Floor

20 New York, NY 10013-1413

21 Telephone: 212.355.9500

Facsimile: 212.355.9592

22 *Class Counsel*

## **TABLE OF CONTENTS**

	<b>Page</b>
I. INTRODUCTION .....	1
II. OVERVIEW OF THE LITIGATION.....	2
III. THE PROPOSED SETTLEMENT TERMS AND SCHEDULE OF EVENTS .....	4
1. Cessation of the Three URL Uses Relevant to this Class Action .....	5
IV. CERTIFICATION OF THE PROPOSED SETTLEMENT CLASS IS APPROPRIATE.....	9
A. Rule 23(a) is Satisfied. ....	9
1. The Settlement Class Is Too Numerous to Permit Joinder. ....	9
2. This Action Presents Common Questions of Law or Fact. ....	10
3. Class Representatives' Claims are Typical of Those of the Settlement Class. ....	10
4. Class Representatives and Their Counsel Will Fairly and Adequately Protect the Interests of the Settlement Class Members. ....	11
B. The Requirements of Rule 23(b)(2) are Satisfied. ....	12
C. Preliminary Approval of the Settlement is Appropriate. ....	13
1. The Settlement Falls Within the Range of Possible Approval.....	13
2. The Settlement is the Product of Arm's-Length Negotiations After a Thorough Investigation, Without a Trace of Collusion .....	15
3. The Recommendation of Experienced Counsel Favors Approval. ....	17
V. CONCLUSION .....	17

**TABLE OF AUTHORITIES****Page****CASES**

<i>Armstrong v. Davis</i> , 275 F.3d 849 (9th Cir. 2001).....	10
<i>Arnott v. U.S. Citizenship &amp; Immigration Servs.</i> , 290 F.R.D. 579 (C.D. Cal. Oct. 22, 2012) .....	9
<i>Bee, Denning, Inc. v. Capital Alliance Group</i> , No. 13-cv-02654-BAS, 2016 WL 3952153 (S.D. Cal. 2016).....	8
<i>Churchill Village, L.L.C. v. Gen. Elec.</i> , 361 F.3d 566 (9th Cir. 2004).....	13
<i>Class Plaintiffs v. City of Seattle</i> , 955 F.2d 1268 (9th Cir. 1992).....	13, 15
<i>Ellis v. Naval Air Rework Facility</i> , 87 F.R.D. 15 (N.D. Cal. 1980).....	16
<i>Hanlon v. Chrysler Corp</i> , 150 F.3d 1011 (9th Cir. 1998).....	10, 11, 13
<i>Hart v. Colvin</i> , No. 15-cv-00623-JST, 2016 WL 6611002 (N.D. Cal. 2016).....	8
<i>Hendricks v. Starkist Co</i> , No. 13-cv-00729-HSG, 2015 WL 4498083 (N.D. Cal. July 23, 2015) .....	14
<i>In re Heritage Bond Litig.</i> , No. 02-ML-1475-DT, 2005 WL 1594403 (C.D. Cal. June 10, 2005) .....	16
<i>In re Juniper Networks Sec. Litig.</i> , 264 F.R.D. 584 (N.D. Cal. 2009).....	10
<i>In re Yahoo Mail Litig.</i> , 308 F.R.D. 577 (N.D. Cal. 2015).....	10, 12
<i>In re Yahoo Mail Litig.</i> , No. 13-CV-4980-LHK, 2016 WL 4474612 (N.D. Cal. Aug. 25, 2016).....	8, 15
<i>Jordan v. Cnty. of Los Angeles</i> , 669 F.2d 1311 (9th Cir. 1982), <i>vacated on other grounds</i> , 459 U.S. 810 (1982).....	9, 10
<i>Kim v. Space Pencil, Inc.</i> , No. C 11-03796 LB, 2012 WL 5948951 (N.D. Cal. 2012) .....	8
<i>Kline v. Dymatize Enterprises, LLC</i> , No. 15-cv-2348-AJB-RBB, 2016 WL 6026330 (S.D. Cal. 2016).....	8
<i>Knight v. Red Door Salons, Inc.</i> , No. 08-01520 SC, 2009 WL 248367 (N.D. Cal. Feb. 2, 2009) .....	17
<i>Lilly v. Jamba Juice Co.</i> , No. 13-cv-02998-JST, 2015 U.S. WL 1248027 (N.D. Cal. Mar. 18, 2015).....	8
<i>Linney v. Cellular Alaska Partnership</i> , No. C-96-3008 DLJ, 1997 WL 450064 (N.D. Cal. July 18, 1997).....	17
<i>Lyon v. United States Immigration and Customs Enf't</i> , 300 F.R.D. 628 (N.D. Cal. 2014).....	8

**TABLE OF AUTHORITIES**

(continued)

**Page**

<i>Newman v. Stein</i> , 464 F.2d 689 (2d Cir. 1972).....	15
<i>Pilkington v. Cardinal Health, Inc.</i> , 516 F.3d 1095 (9th Cir. 2008).....	13
<i>Rodriguez v. West Publishing Corp.</i> , 563 F.3d 963 (9th Cir. 2009).....	14
<i>Staton v. Boeing Co.</i> , 327 F.3d 938 (9th Cir. 2003).....	11
<i>Sueoka v. U.S.</i> , 101 F. App'x 649 (9th Cir. 2004) .....	10
<i>Wal-Mart Stores, Inc. v. Dukes</i> , 131 S. Ct. 2541 (2011).....	8, 10

**RULES**

Fed. R. Civ. P.	
23(a)(1).....	9
23(a)(3).....	10
23(a)(4).....	11
23(b)(2) .....	12, 15
23(e)(2).....	13

**TREATISES**

Alba Conte et al., <i>Newberg on Class Actions</i> § 3.10 (3rd ed. 1992).....	10
Alba Conte et al., <i>Newberg on Class Actions</i> § 11.41 (4th ed. 2002) .....	15
Alba Conte et al., <i>Newberg on Class Actions</i> § 11.25 (4th ed. 2002) .....	13
<i>Manual for Complex Litigation (Fourth)</i> (2004) § 21.632.....	13

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Plaintiffs and Class Representatives Mathew Campbell and Michael Hurley respectfully submit for the Court’s preliminary approval a proposed Class Action Settlement Agreement (“Settlement”) resolving the above-captioned action (the “Action”), which alleges that Defendant Facebook, Inc. (“Facebook”) intercepted the content of private Facebook messages, without consent, in violation of the Electronic Communications Privacy Act, 18 U.S.C. §§ 2510, *et seq.* (“ECPA”) and Cal. Penal Code §§ 630, *et seq.* (“CIPA”).

Pursuant to the terms of the Settlement, Facebook has agreed to substantial changes that bring Facebook’s message processing practices in compliance with Class Counsel’s view of ECPA and CIPA’s requirements. Specifically, pursuant to the terms of the Settlement, Facebook has confirmed that the alleged unlawful conduct challenged in the operative Second Amended Complaint has ceased—namely, Facebook confirms that it no longer utilizes data from URLs within private messages to (1) generate recommendations to its users; (2) share user data with third parties or (3) increase “like” counter numbers on third party websites. In addition, Facebook has confirmed, as of the date of the Settlement, that it is not using any data from EntShares created from URL attachments sent by users in Facebook Messages in any public counters in the “link\_stats” and Graph APIs. In addition, during the course of this litigation, Facebook made changes to its operative disclosures to its users, stating that it collects the “content and other information” that people provide when they “message or communicate with others,”—thereby further explaining the ways in which Facebook may use that content. Facebook has also agreed to display additional educational language on its United States website for Help Center materials concerning its processing of URLs shared within messages.

Pursuant to the Settlement, absent Settlement Class Members would release claims for declaratory, injunctive, and non-monetary equitable relief only; claims for monetary damages are specifically excluded from the proposed Settlement Class Members’ Released Claims. Attorneys’ fees and costs and service awards to the Class Representatives that may be awarded by the Court will be paid by Facebook. The Settlement addresses each of the challenged practices

1 that the Court certified for class treatment, achieves the goals of the litigation as articulated in the  
 2 operative Second Amended Complaint, protects the interests of any Settlement Class Members  
 3 that may not be remedied through injunctive relief, and falls well within the “range of  
 4 reasonableness” applicable at the preliminary approval stage.

5 The Settlement is the product of extensive arm’s-length negotiations between the parties  
 6 and their experienced and informed counsel. Settlement negotiations spanned over six months  
 7 and included multiple mediation sessions before highly respected and skilled mediators Cathy  
 8 Yanni and Randall Wulff. Prior to reaching a resolution, and through three years of hard-fought  
 9 litigation, Class Counsel thoroughly examined both the facts and rapidly-developing law involved  
 10 in this case, reviewed and analyzed tens of thousands of documents produced by Facebook, spent  
 11 hundreds of hours reviewing detailed technical documentation, deposed more than a dozen  
 12 witnesses and achieved certification of a class for injunctive relief. Class Counsel possess a firm  
 13 understanding of both the strengths and weaknesses of Class Representatives’ allegations and  
 14 Facebook’s potential defenses. Both prior to and during the negotiations, Class Counsel faced  
 15 formidable opposition from Facebook’s counsel who zealously defended their client’s position.  
 16 Both sides were well-represented by seasoned and informed counsel who vigorously pursued  
 17 their respective clients’ interests.

18 In sum, the Settlement achieves significant business practice changes, and benefits the  
 19 Settlement Class now, without the inherent risks of continued litigation and without requiring  
 20 Class Members to release any claims they may have for monetary relief. The Settlement was  
 21 only reached after months of discovery and arm’s-length negotiations and enjoys the support of a  
 22 neutral mediator who had an integral part in the settlement negotiations. Consequently, the  
 23 Settlement satisfies the criteria for preliminary approval.

## 24 **II. OVERVIEW OF THE LITIGATION**

25 On December 30, 2013, Plaintiffs Matthew Campbell and Michael Hurley filed a class  
 26 action complaint in the United States District Court for the Northern District of California  
 27 asserting claims under the Electronic Communications Privacy Act (“ECPA”; 18 U.S.C. §§ 2510  
 28 *et seq.*); the California Invasion of Privacy Act (“CIPA”; Cal. Penal Code §§ 630, *et seq.*); and



California’s Unfair Competition Law (“UCL”; California Business and Professions Code §§ 17200, *et seq.*), alleging, *inter alia*, that Facebook “read[] its users’ personal, private Facebook messages without their consent” for “purposes including but not limited to data mining and user profiling,” and “generating ‘Likes’ for web pages” and “targeted advertising,” on behalf of themselves and a proposed class of “[a]ll natural person Facebook users located within the United States who have sent or received private messages where such message included URLs in the content, from within two years before the filing of this action up through and including the date of the judgment in this case” (Dkt. 1).

On January 21, 2014, David Shadpour filed another complaint in the United States District Court for the Northern District of California alleging similar facts and asserting similar claims under ECPA, CIPA and the UCL against Facebook (*see Shadpour v. Facebook, Inc.*, Case No. 5:14-cv-00307-PSG (N.D. Cal.), Dkt. 1).

On April 15, 2014, the Court granted Plaintiffs’ Motion to Consolidate the Related Actions (Dkt. 24), thereby consolidating the *Campbell* and *Shadpour* actions, and on April 25, 2014, the Class Representatives filed a Consolidated Amended Complaint asserting ECPA, CIPA, and UCL claims on behalf of themselves and a proposed class of “[a]ll natural-person Facebook users located within the United States who have sent or received private messages that included URLs in their content, from within two years before the filing of this action up through and including the date when Facebook ceased its practice” (Dkt. 25).<sup>2</sup>

On December 23, 2014, the Court issued an order granting in part and denying in part Facebook’s motion to dismiss the Consolidated Amended Complaint, dismissing the claims under CIPA § 632 and the UCL, but denying the motion to dismiss claims under ECPA and CIPA § 631 (Dkt. 43).

The parties engaged in almost two years of extensive discovery, including the production of tens of thousands of pages of documents, fact and expert depositions of 18 witnesses (spanning 19 days of testimony), informal conferences and discussions, hundreds of hours reviewing

---

<sup>2</sup> On October 2, 2015 David Shadpour voluntarily dismissed his claims, with prejudice, pursuant to Federal Rule of Civil Procedure 41(a) (Dkt. 123).

1 detailed technical documentation, substantial discovery motion practice and the exchange of  
 2 hundreds of pages of written discovery requests and responses. A mediation between the parties  
 3 before Cathy Yanni of JAMS on August 19, 2015 was unsuccessful.

4 On May 18, 2016, the Court issued an order granting in part and denying in part Plaintiffs'  
 5 Motion for Class Certification, denying certification as to the proposed damages class under  
 6 Federal Rule of Civil Procedure 23(b)(3), but granting certification of the injunctive-relief class  
 7 under Federal Rule of Civil Procedure 23(b)(2). Specifically, the Court certified for class  
 8 treatment three specific alleged uses by Facebook of URLs included in private messages:  
 9 (1) Facebook's cataloging URLs shared in private messages and counting them as a "like" on the  
 10 relevant third-party website, (2) Facebook's use of data regarding URLs shared in private  
 11 messages to generate recommendations for Facebook users, and (3) Facebook's sharing of data  
 12 regarding URLs in messages (and attendant demographic data about the messages' participants)  
 13 with third parties. (Dkt. 192, at 3-5). In addition, the Court directed the Plaintiffs to file a Second  
 14 Amended Complaint "(1) revising the class definition to reflect the definition set forth in the class  
 15 certification motion, and (2) adding allegations regarding the sharing of data with third parties"  
 16 (*Id.* at 6). On June 7, 2016, the Class Representatives filed a revised, Second Amended  
 17 Complaint as ordered (Dkt. 196).

18 Following the class certification ruling, the parties engaged in additional discovery and  
 19 then agreed to further mediate their dispute; first in a second and third session before Cathy Yanni  
 20 on July 21, 2016, and July 28, 2016, and then in a fourth session with Randall Wulff on  
 21 December 7, 2016. In a Joint Status Report filed on December 23, 2016, the parties informed the  
 22 Court that they had reached a settlement-in-principle to resolve the Action. (Dkt. 222).  
 23 Thereafter, the parties memorialized the settlement in the Settlement Agreement executed on  
 24 March 1, 2017 and filed herewith as Exhibit 1 to the Joint Declaration of Michael W. Sobol and  
 25 Hank Bates ("Joint Declaration").

### 26 **III. THE PROPOSED SETTLEMENT TERMS AND SCHEDULE OF EVENTS**

27 The Settlement achieves and memorializes significant changes to Facebook's practices  
 28 related to the use of URLs in private messages that address each of the three challenged practices

certified for class treatment by the Court and detailed in the operative Second Amended Complaint, bringing Facebook's practices related to the use of URLs in private messages within compliance, in Class Counsel's view, of both ECPA and CIPA. Specifically, in consideration for the dismissal of the Action with prejudice and the releases provided in the Settlement Agreement, Facebook has agreed to the following:

**1. Cessation of the Three URL Uses Relevant to this Class Action**

In the Settlement Agreement, Facebook confirms that the following uses of data from EntShares created from URLs sent in Facebook Messages during the Class Period have ceased, as of the dates set forth below specific to each use:

- **"Like" Count Increment.** From the beginning of the Class Period until on or about December 19, 2012, Facebook source code was engineered so that when an anonymous, aggregate count was displayed next to a "Like" button on a third-party web page, that count often included, *inter alia*, the number of times a URL related to that particular website had been shared by Facebook users in Facebook Messages and resulted in creation of an EntShare. On or about December 19, 2012, Facebook changed its source code such that the external count no longer included the number of shares, by users, of URLs in private messages that resulted in creation of EntShares. Settlement Agreement ¶ 40(a)(i).
- **Sharing of URL Data with Third Parties.** Facebook makes its "Insights" user interface and related API available to owners of third-party websites that choose to include Facebook tools or features, for purposes of providing anonymous, aggregate data about interaction with and traffic to their websites. During certain periods of time during the Class Period, this information included anonymous, aggregate statistics and demographic information about users who shared links to those sites across the Facebook platform. From the beginning of the Class Period until on or about October 11, 2012, these statistics and demographic information included information about users who shared URLs in Facebook Messages that resulted in creation of EntShares. On or about October 11, 2012, Facebook

changed its source code such that it ceased including information about URL shares in Facebook Messages that resulted in creation of EntShares (and attendant statistics and demographic information) within Insights and its related API. Settlement Agreement ¶ 40(a)(ii).

- **Use of URL Data to Generate Recommendations.** Facebook's Recommendations Feed was a social plugin offered to developers that displayed a list of URLs representing the most recommended webpages on that developer's site. Over time, two different units of Facebook source code determined the list of URLs that would appear in the Recommendations Feed for a given webpage at a given time. One of those units of Facebook source code was the "PHP backend." Although, during the Class Period, the PHP backend was not the primary system determining the list of URLs that would appear in the Recommendations Feed, the PHP backend served as a backup system if the primary system failed. The PHP backend considered, *inter alia*, an anonymous, aggregate count of, *inter alia*, the number of times a URL had been shared in a Facebook Message and resulted in creation of an EntShare. On or about July 9, 2014, Facebook changed its code such that it ceased utilizing the PHP backend as the backup system for its Recommendations Feed. Settlement Agreement ¶ 40(a)(iii).
- **Use of EntShares created from URLs in Messages.** In addition, Facebook confirms that, as of the date of execution of the Settlement Agreement, it is not using any data from EntShares created from URL attachments sent by users in Facebook Messages for: 1) targeted advertising; 2) sharing personally identifying user information with third parties; 3) use in any public counters in the "link\_stats" and Graph APIs; and 4) displaying lists of URLs representing the most recommended webpages on a particular web site. Settlement Agreement ¶ 40(b).
- **Disclosure Changes.** Facebook implemented enhanced disclosures after the filing of this Action that benefited the Class. Specific to the private message function, in January 2015, Facebook revised its Data Policy to disclose that Facebook collects

the “content and other information” that people provide when they “message or communicate with others,” and to further explain the ways in which Facebook may use that content. Settlement Agreement ¶ 40(c). Facebook has taken the position that these changes—implemented during the course of this litigation—were significant and transparent enough to establish consent to the practices complained of in this action (or at minimum neutralize any further suggestion that Facebook users were not aware of the practices complained of in this action).

- **Additional Explanatory Language.** Pursuant to the Settlement Agreement, Facebook will display the following additional language, without material variation, on its United States website for Help Center materials concerning messages within 30 days of the Effective Date: “We use tools to identify and store links shared in messages, including a count of the number of times links are shared.” Facebook will make this additional language available on its United States website for a period of one year from the date it is posted, provided however that Facebook may update the disclosures to ensure accuracy with ongoing product changes. Settlement Agreement ¶ 40(d).

In exchange for the foregoing consideration, the Action will be dismissed with prejudice upon final approval of the Settlement, and the Settlement Class Members will thereby release all claims which have been or could have been asserted against Facebook by any member of the Settlement Class in this Action, with the caveat that the release provided under the Settlement Agreement extends *solely* to claims for declaratory, injunctive, and non-monetary equitable relief. No Settlement Class Member, with the exception of the Class Representatives, will release any claim for monetary damages under CIPA or ECPA. Settlement Agreement, ¶¶ 44-49. In other words, the class benefits and the class release parallel the contours of the class certified by the Court. Additionally, Facebook has agreed not to take a position on an application by Class Counsel for an award of \$3,890,000 in Attorneys’ Fees and Expenses (which represents a negative Lodestar multiplier), and for Service Awards in the amount of \$5,000 to each of the Class Representatives. Settlement Agreement, ¶¶ 57, 60.

1 Finally, pursuant to the Settlement Agreement, Facebook is obligated to serve notice of  
 2 the Settlement Agreement that meets the requirements of 28 U.S.C. § 1715, on the appropriate  
 3 federal and state officials no later than ten (10) days following the filing of this Settlement  
 4 Agreement with the Court. Settlement Agreement ¶ 56. As the class claims in this Action only  
 5 pertain to declaratory, injunctive, and non-monetary equitable relief and the proposed Class  
 6 Settlement does not include any release of monetary claims, notice to Class Members was not  
 7 required after the Court's May 18, 2016 order certifying the class pursuant to Fed. R.  
 8 Civ. P. 23(b)(2) and is not required as part of the proposed Settlement. *See Wal-Mart Stores,*  
 9 *Inc. v. Dukes*, 131 S. Ct. 2541, 2558 (2011); *Lilly v. Jamba Juice Co.*, No. 13-cv-02998-JST,  
 10 2015 U.S. WL 1248027, at \*9 (N.D. Cal. Mar. 18, 2015) (“[E]ven if notified of the settlement,  
 11 the settlement class would not have the right to opt out from the injunctive settlement and the  
 12 settlement does not release the monetary claims of class members, [therefore] the Court  
 13 concludes that class notice is not necessary.”); *In re Yahoo Mail Litig.*, No. 13-CV-4980-LHK,  
 14 2016 WL 4474612, at \*5 (N.D. Cal. Aug. 25, 2016) (“[B]ecause Rule 23(b)(2) provides only  
 15 injunctive and declaratory relief, ‘notice to the class is not required.’”) (quoting in part *Lyon v.*  
 16 *United States Immigration and Customs Enf’t*, 300 F.R.D. 628, 643 (N.D. Cal. 2014)); *Hart v.*  
 17 *Colvin*, No. 15-cv-00623-JST, 2016 WL 6611002 at \*9 (N.D. Cal. 2016); *Kim v. Space Pencil,*  
 18 *Inc.*, No. C 11-03796 LB, 2012 WL 5948951 (N.D. Cal. 2012); *Kline v. Dymatize Enterprises,*  
 19 *LLC*, No. 15-cv-2348-AJB-RBB, 2016 WL 6026330 at \*6 (S.D. Cal. 2016); *Bee, Denning, Inc. v.*  
 20 *Capital Alliance Group*, No. 13-cv-02654-BAS, 2016 WL 3952153 at \*9 (S.D. Cal. 2016).

21 Consistent with the provisions of the Settlement, Plaintiffs respectfully propose the  
 22 following schedule:

- 23 • Class Counsel’s motions for final approval and for attorneys’ fees, costs and  
 24 service awards: 30 days after the Court’s order of preliminary approval;
- 25 • Objection Deadline: 60 days after the Court’s order of preliminary approval;
- 26 • Deadline for parties to file a response to any comments or objections by a Class  
 27 Member: 74 days after the Court’s order of preliminary approval;
- 28 • Final Approval Hearing: at least 100 days after the filing of this motion for

preliminary approval and at least 81 days after the Court's order of preliminary approval.

**IV. CERTIFICATION OF THE PROPOSED SETTLEMENT CLASS IS APPROPRIATE**

The parties agree that for purposes of settlement only, the class certified by the Court on May 18, 2016 should be modified slightly to bring the end of the class period current to the date of execution of the Settlement and to explicitly include Facebook users located in United States territories. Accordingly, for the purposes of the provisional certification, the parties propose that the Settlement Class be defined as follows:

All natural-person Facebook users located within the United States and its territories who have sent, or received from a Facebook user, private messages that included URLs in their content (and from which Facebook generated a URL attachment), from December 30, 2011 to March 1, 2017.

These revisions to the class definition do not materially change the analysis for class certification pursuant to Rule 23(a) and Rule 23(b)(2) of a class for injunctive and declaratory relief. Accordingly, as discussed below, for the same reasons the Court previously held in its May 18, 2016 Class Certification Order (Dkt. 192, "Class Cert. Order"), the proposed Settlement Class meets the requirement of class certification set forth in Rule 23(a) and Rule 23(b)(2).

**A. Rule 23(a) is Satisfied.**

**1. The Settlement Class Is Too Numerous to Permit Joinder.**

A case may be certified as a class action only if "the class is so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). While there is no fixed rule, numerosity is generally presumed when the potential number of class members reaches forty (40). *Jordan v. Cnty. of Los Angeles*, 669 F.2d 1311, 1319 (9th Cir. 1982), *vacated on other grounds*, 459 U.S. 810 (1982). In addition, "[b]ecause plaintiffs seek injunctive and declaratory relief, the numerosity requirement is relaxed and plaintiffs may rely on [ ] reasonable inference[s] arising from plaintiffs' other evidence that the number of unknown and future members of [the] proposed [ ]class ... is sufficient to make joinder impracticable." *Arnott v. U.S. Citizenship & Immigration Servs.*, 290 F.R.D. 579, 586 (C.D. Cal. Oct. 22, 2012) (all but last alteration in original) (quoting



1 *Sueoka v. U.S.*, 101 F. App'x 649, 653 (9th Cir. 2004)).

2 Here, numerosity is readily satisfied. The total Facebook audience in the United States is  
3 estimated to be more than 190 million.<sup>3</sup> Even if only a small fraction of Facebook users  
4 embedded a URL in a private message during the Class period, the numerosity requirement would  
5 easily be met. Indeed, the Court made such an inference in granting class certification for  
6 purposes of litigation. Class Cert. Order, at 13.

7 **2. This Action Presents Common Questions of Law or Fact.**

8 Rule 23(a)(2) requires that there be one or more questions common to the class. *See*  
9 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998); 1 Newberg § 3.10; *see also Wal-*  
10 *Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2556 (2011). Plaintiffs “need only show the  
11 existence of a common question of law or fact that is significant and capable of classwide  
12 resolution.” *In re Yahoo Mail Litig.*, 308 F.R.D. 577, 592 (N.D. Cal. 2015) (citations omitted).  
13 The Court has already held that “a single common question is sufficient” to satisfy Rule 23(a)(2),  
14 and that commonality is established by “the mere fact that Facebook creates a share object every  
15 time a message is sent with a URL.” Class Cert. Order at 15.

16 **3. Class Representatives’ Claims are Typical of Those of the Settlement**  
17 **Class.**

18 Rule 23(a)(3) requires that “the claims and defenses of the representative parties are  
19 typical of the claims or defenses of the class.” Fed. R. Civ. P. 23(a)(3). Typicality does not  
20 require total identity between representative plaintiffs and class members. *Armstrong v. Davis*,  
21 275 F.3d 849, 868 (9th Cir. 2001). Rather, typicality is satisfied so long as the plaintiffs’ claims  
22 stem “from the same event, practice, or course of conduct that forms the basis of the class claims,  
23 and is based upon the same legal theory.” *Jordan*, 669 F.2d at 1322; *In re Juniper Networks Sec.*  
24 *Litig.*, 264 F.R.D. 584, 589 (N.D. Cal. 2009) (“representative claims are ‘typical’ if they are  
25 reasonably co-extensive with those of absent class members”) (citation omitted).

26 Here, the Class Representatives’ claims stem from the same common course of conduct as

27 <sup>3</sup> [https://www.statista.com/statistics/268136/top-15-countries-based-on-number-of-facebook-](https://www.statista.com/statistics/268136/top-15-countries-based-on-number-of-facebook-users/)  
28 [users/](https://www.statista.com/statistics/268136/top-15-countries-based-on-number-of-facebook-users/)



the claims of the Class Members. Class Representatives and the Class Members contend that they did not consent to Facebook’s processing of their electronic communications, which conduct forms the basis for this suit. Facebook’s conduct is common to all Class Members and represents a common thread of conduct resulting in injury to all Class Members. The injunctive and declaratory relief achieved by the Settlement would apply to all Class Representatives and Class Members equally. As the Court has already held, “Plaintiffs argue that they are users who have sent private messages containing a URL link, and that Facebook intercepted the URL content of their messages in the same manner that it did with the rest of the class’s messages,” and accordingly, “the typicality requirement is met.” Class Cert. Order, at 16.

**4. Class Representatives and Their Counsel Will Fairly and Adequately Protect the Interests of the Settlement Class Members.**

Rule 23(a)(4) requires that the representative plaintiffs will “fairly and adequately” protect the interests of the class. The two-prong test for determining adequacy is: “(1) Do the representative plaintiffs and their counsel have any conflicts of interest with other class members?; and (2) will the representative plaintiffs and their counsel prosecute the action vigorously on behalf of the class?” *Staton v. Boeing Co.*, 327 F.3d 938, 957 (9th Cir. 2003); *Hanlon*, 150 F.3d at 1020. Both prongs are satisfied here.

First, the Class Representatives’ interests are aligned with, and not antagonistic to, the interests of the Settlement Class Members. Indeed, the Class Representatives and the Settlement Class Members are equally interested in ensuring that Facebook’s treatment of, and practices regarding, the content of their private communications are conducted in compliance with ECPA and CIPA. *See Hanlon*, 150 F.3d at 1021 (adequacy satisfied where “each...plaintiff has the same problem”). Accordingly, the Class Representatives will fairly and adequately protect the interests of all Settlement Class Members.

Second, Class Counsel have extensive experience litigating and settling class actions, including consumer cases throughout the United States. *See Joint Decl.*, ¶¶ 17-22. Class Counsel are well-qualified to represent the Settlement Class. In addition, Class Counsel, along with the Class Representatives, have vigorously litigated this action in order to protect the interests of the

1 Settlement Class and maximize the relief obtained for all Settlement Class Members, as  
 2 evidenced by, *inter alia*, the terms of the proposed Settlement. *See* Joint Decl., ¶¶ 6-14, 23-27.

3 In granting class certification for purposes of litigation, the Court found “no indication  
 4 that either plaintiffs or their counsel has any conflict with the Class Members, nor any reason to  
 5 believe that they would not prosecute this action vigorously on behalf of the Class.  
 6 Accordingly...the adequacy requirement [is] met.” Class Cert. Order at 17. Since the Court’s  
 7 order granting class certification, Class Counsel have continued to vigorously litigate this action  
 8 and have further engaged in extensive settlement negotiations, further evidencing that  
 9 Rule 23(a)’s adequacy requirement remains satisfied.

10 **B. The Requirements of Rule 23(b)(2) are Satisfied.**

11 In addition to the requirements of Rule 23(a), at least one of the prongs of Rule 23(b) must  
 12 be satisfied. Here, the proposed Settlement Class satisfies Rule 23(b)(2), which permits a class  
 13 action if the Court finds that “the party opposing the class has acted or refused to act on grounds  
 14 that apply generally to the class, so that final injunctive relief or corresponding declaratory relief  
 15 is appropriate respecting the class as a whole.” Fed. R. Civ. P. 23(b)(2).

16 Under identical circumstances, courts in this District have held that the requirements of  
 17 Rule 23(b)(2) are satisfied where “all emails sent from and to [an electronic communication  
 18 service provider’s] subscribers are subject to the same interception and scanning processes.” *In*  
 19 *re Yahoo Mail Litig.*, 308 F.R.D. at 598 (“*Yahoo*”). Like this Action, *Yahoo* dealt with an  
 20 electronic communication service provider’s common policy and practice of processing electronic  
 21 communications in a manner that allegedly resulted in interception and the extraction of message  
 22 content. *Id.* Where, as here, the plaintiffs sought “uniform relief” addressing commonly- and  
 23 consistently-applied message-scanning practices, the *Yahoo* court held that the requirements of  
 24 Rule 23(b)(2) were satisfied. *Id.* at 600.

25 In the instant matter, the Court has found the reasoning in *Yahoo* persuasive and adopted  
 26 same with regard to the facts of this case, finding that certification under Rule 23(b)(2)—for  
 27 injunctive and declaratory relief only—was proper. Class Cert. Order, at 27-29 (citing *Yahoo*,  
 28 308 F.R.D. at 598-601).

1           **C.     Preliminary Approval of the Settlement is Appropriate.**

2           Public policy “strong[ly] ... favors settlements, particularly where complex class action  
3 litigation is concerned.” *Pilkington v. Cardinal Health, Inc.*, 516 F.3d 1095, 1101 (9th Cir.  
4 2008); *Churchill Village, L.L.C. v. Gen. Elec.*, 361 F.3d 566, 576 (9th Cir. 2004); *Class*  
5 *Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992).

6           “[T]he decision to approve or reject a settlement is committed to the sound discretion of  
7 the trial judge because he is exposed to the litigants and their strategies, positions, and proof.”  
8 *Hanlon*, 150 F.3d at 1026. In exercising such discretion, the Court should give “proper deference  
9 to the private consensual decision of the parties...[T]he court’s intrusion upon what is otherwise a  
10 private consensual agreement negotiated between the parties to a lawsuit must be limited to the  
11 extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or  
12 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a  
13 whole, is fair, reasonable and adequate to all concerned.” *Hanlon*, 150 F.3d at 1027; *see also*  
14 *Fed. R. Civ. P. 23(e)(2)*.

15           The proposed Settlement here satisfies the standard for preliminary approval because:  
16 (a) it is within the range of possible approval; (b) there is no reason to doubt its fairness because it  
17 is the product of hard-fought, arm’s-length negotiations between the parties and was only reached  
18 after a thorough investigation by Class Counsel of the facts and the law; and (c) Class  
19 Representatives and Class Counsel believe it is in the best interest of the Settlement Class.

20           **1.     The Settlement Falls Within the Range of Possible Approval**

21           To grant preliminary approval of the proposed Settlement, the Court need only find that it  
22 falls within “the range of reasonableness.” Alba Conte et al., *Newberg on Class Actions* § 11.25,  
23 at 11-91 (4th ed. 2002). The *Manual for Complex Litigation (Fourth)* (2004) (“*Manual*”) characterizes the preliminary approval stage as an “initial evaluation” of the fairness of the  
24 proposed settlement made by the court on the basis of written submissions and informal  
25 presentation from the settling parties. *Manual* § 21.632. Evaluating where a proposed settlement  
26 falls within this spectrum entails focus “on substantive fairness and adequacy,” and weighing  
27 “Plaintiffs’ expected recovery ... against the value of the settlement offer.” *Hendricks v. Starkist*  
28

1 Co, No. 13-cv-00729-HSG, 2015 WL 4498083, at \*6 (N.D. Cal. July 23, 2015) (quotation  
2 omitted).

3 Here, consistent with the Court's May 18, 2016 Order certifying an injunctive relief class,  
4 Plaintiffs sought classwide declaratory, injunctive, and non-monetary equitable relief under  
5 ECPA and CIPA related to three specific uses by Facebook of URLs in private messages, as  
6 detailed in the operative Second Amended Complaint. While Facebook has vigorously contested  
7 its liability, the terms of the Settlement provide meaningful, targeted relief that addresses all three  
8 URL uses alleged in the operative Second Amended Complaint in a manner that Class  
9 Representatives contend brings Facebook's practices into compliance with Class Representatives'  
10 view of both ECPA and CIPA.

11 In contrast to the tangible, immediate benefits of the Settlement, the outcome of continued  
12 litigation, trial and potential appeal is uncertain and could add years to this litigation. Facebook  
13 has vigorously denied any wrongdoing, and, absent settlement, Class Representatives anticipate  
14 Facebook would defend this action aggressively at multiple, procedural steps prior to trial,  
15 including a motion for summary judgment. While Class Representatives strongly believe in the  
16 merits of their case, they recognize that the law is in relative infancy in the context of ECPA's  
17 application to electronic messages, and this uncertainty presents at least some element of risk at  
18 multiple, critical junctures in this Action. For instance, the parties have advanced conflicting  
19 interpretations of certain elements of Class Representatives' ECPA claim, including the  
20 definitions and effect of the terms "in transit" and "storage," and Class Representatives may face  
21 the risk on appeal that the Ninth Circuit might agree with Facebook's interpretation of these  
22 terms.

23 While Class Representatives firmly believe in the strength of their claims, and have  
24 amassed substantial evidence in support of those claims through the discovery process, there is at  
25 least some risk that, absent a settlement, Facebook might prevail in motion practice, at trial, or on  
26 appeal, resulting in no relief to the Class. This weighs in favor of preliminary approval. *See, e.g.,*  
27 *Rodriguez v. West Publishing Corp.*, 563 F.3d 963, 966 (9th Cir. 2009) (noting that the  
28 elimination of "[r]isk, expense, complexity, and likely duration of further litigation," including,

1 *inter alia*, an “anticipated motion for summary judgment, and ... [i]nevitable appeals would likely  
 2 prolong the litigation, and any recovery by class members, for years,” which facts militated in  
 3 favor of approval of settlement); *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972) (“[I]n any  
 4 case there is a range of reasonableness with respect to a settlement—a range which recognizes the  
 5 uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily  
 6 inherent in taking any litigation to completion.”).

7 Ultimately, Facebook has agreed to provide the injunctive relief sought on behalf of the  
 8 Settlement Class—namely, it has implemented and confirmed substantial changes to both its  
 9 business practices and to its disclosures and Help Center materials, which Class Representatives  
 10 contend bring Facebook’s business practices into compliance with their view of ECPA and CIPA.  
 11 Similarly, the release obtained by Facebook only extends to Settlement Class Members’ claims  
 12 for declaratory, injunctive, and non-monetary equitable relief. No Settlement Class Member,  
 13 with the exception of the Class Representatives, will release any claim for damages. *See In re*  
 14 *Yahoo Mail Litig.*, No. 13-cv-04980-LHK (N.D. Cal.) (ECF No. 182) (N.D. Cal. Mar. 15, 2016)  
 15 (holding, under analogous circumstances, that a very similar result obtained on behalf of a class  
 16 of email users and certified under Rule 23(b)(2) was within the range of possible approval).

17 In sum, the Settlement provides substantial, meaningful relief to all Settlement Class  
 18 Members based on the strengths of their claims without delay and is within the range of possible  
 19 approval, particularly in light of the above risks that Settlement Class Members would face in  
 20 further litigation.

21 2. **The Settlement is the Product of Arm’s-Length Negotiations After a**  
 22 **Thorough Investigation, Without a Trace of Collusion**

23 “Before approving a class action settlement, the district court must reach a reasoned  
 24 judgment that the proposed agreement is not the product of fraud or overreaching by, or collusion  
 25 among, the negotiating parties.” *City of Seattle*, 955 F.2d at 1290. Where a settlement is the  
 26 product of arm’s-length negotiations conducted by capable and experienced counsel, the court  
 27 begins its analysis with a presumption that the settlement is fair and reasonable. *See* 4 Newberg  
 28 § 11.41; *In re Heritage Bond Litig.*, No. 02-ML-1475-DT, 2005 WL 1594403, at \*2 (C.D. Cal.

1 June 10, 2005); *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980).

2 Here, the Settlement was reached after informed, extensive arm's-length negotiations.  
3 First, the Settlement was reached after a thorough investigation into and discovery of the legal  
4 and factual issues in the Action. In particular, before filing suit, Class Counsel conducted an  
5 extensive investigation into the factual underpinnings of the practices challenged in the Action, as  
6 well as the applicable law. In addition to their pre-filing efforts, Class Counsel engaged in  
7 extensive discovery, including the review of tens of thousands of pages of documents, fact and  
8 expert depositions of 18 witnesses (spanning 19 days of testimony), a detailed review (totaling  
9 hundreds of hours) of highly technical documentation relevant to the private message function,  
10 substantial discovery motion practice and the exchange of hundreds of pages of written discovery  
11 requests and responses.

12 Second, the Settlement was reached only after the parties participated in three in-person  
13 mediation sessions before experienced mediators Randall Wulff and Cathy Yanni as well as  
14 multiple telephone conferences with the mediators. These mediation sessions were informed  
15 through the exchange of confidential mediation statements, which discussed the strengths and  
16 weaknesses of both Class Representatives' allegations and Facebook's potential defenses and  
17 relevant documents related thereto. Throughout the mediation sessions, counsel vigorously  
18 advocated for their respective clients' positions. Notwithstanding the contentious nature of the  
19 mediation sessions, the parties were able to come to an agreement in principle with the assistance  
20 of both mediators.

21 In sum, the Settlement was reached only after Class Counsel conducted an extensive  
22 factual investigation and discovery into the Facebook's alleged misconduct and thoroughly  
23 researched the law pertinent to Class Representatives' and Class Members' claims and  
24 Facebook's defenses. Consequently, Class Counsel had a wealth of information at their disposal  
25 before entering into settlement negotiations, which allowed Class Counsel to adequately assess  
26 the strengths and weaknesses of the case and to balance the benefits of settlement against the risks  
27 of further litigation. Nothing in the course of the negotiations or in the substance of the proposed  
28 Settlement presents any reason to doubt the Settlement's fairness.

1                   **3.     The Recommendation of Experienced Counsel Favors Approval.**

2             In considering a proposed class settlement, “[t]he recommendations of plaintiffs’ counsel  
3     should be given a presumption of reasonableness.” *Knight v. Red Door Salons, Inc.*, No. 08-  
4     01520 SC, 2009 WL 248367, at \*4 (N.D. Cal. Feb. 2, 2009); *see also Linney v. Cellular Alaska*  
5     *P’ship*, No. C-96-3008 DLJ, 1997 WL 450064, at \*5 (N.D. Cal. July 18, 1997). Here, Class  
6     Counsel endorse the Settlement as fair, adequate, and reasonable. Joint Decl., ¶¶ 23-27.

7             As demonstrated herein and in each respective firm’s resume, Class Counsel have  
8     extensive experience litigating and settling consumer class actions and other complex matters (see  
9     Joint Decl., ¶¶ 17-22) and have conducted an extensive investigation into the factual and legal  
10    issues raised in this Action (see Joint Decl., ¶¶ 6-14, 23-27). Using their experience and  
11    knowledge, Class Counsel have weighed the benefits of the Settlement against the inherent risks  
12    and expense of continued litigation, and they strongly believe that the proposed Settlement is fair,  
13    reasonable, and adequate. The fact that qualified and well-informed counsel endorse the  
14    Settlement as being fair, reasonable, and adequate weighs in favor of approving the Settlement.

15           **V.     CONCLUSION**

16           For the foregoing reasons, Plaintiffs respectfully request that the Court do the following:

- 17           a.     Grant preliminary approval of the proposed Class Action Settlement Agreement  
18                 (“Settlement”) entered into between the parties;<sup>4</sup>
- 19           b.     Certify the Settlement Class as defined in the Settlement;
- 20           c.     Appoint Plaintiffs as Settlement Class Representatives of the proposed Class;
- 21           d.     Appoint Lieff Cabraser Heimann & Bernstein LLP and Carney Bates & Pulliam  
              PLLC as Class Counsel for the proposed Settlement Class;
- 22           e.     Stay all non-Settlement related proceedings in the above-captioned case (the  
23                 “Action”) pending final approval of the Settlement; and
- 24           f.     Set a Fairness Hearing and certain other dates in connection with the final approval  
              of the Settlement.

25  
26  
27  
28           <sup>4</sup> See Exhibit 1 to the Joint Declaration of Michael W. Sobol and Hank Bates.



1 Dated: March 1, 2017

Respectfully submitted,

2 CARNEY BATES & PULLIAM, PLLC

3  
4 By: /s/ Hank Bates

Hank Bates (State Bar No. 167688)

5 hbates@cbplaw.com

Allen Carney

6 acarney@cbplaw.com

David Slade

7 dslade@cbplaw.com

519 West 7th Street

8 Little Rock, AR 72201

Telephone: 501.312.8500

9 Facsimile: 501.312.8505

10 Michael W. Sobol (State Bar No. 194857)

msobol@lchb.com

11 David T. Rudolph (State Bar No. 233457)

drudolph@lchb.com

12 Melissa Gardner (State Bar No. 289096)

mgardner@lchb.com

13 LIEFF CABRASER HEIMANN

& BERNSTEIN, LLP

14 275 Battery Street, 29th Floor

San Francisco, CA 94111-3339

15 Telephone: 415.956.1000

16 Facsimile: 415.956.1008

Rachel Geman

17 rgeman@lchb.com

Nicholas Diamand

18 ndiamand@lchb.com

LIEFF CABRASER HEIMANN

19 & BERNSTEIN, LLP

20 250 Hudson Street, 8th Floor

New York, NY 10013-1413

21 Telephone: 212.355.9500

Facsimile: 212.355.9592

22 *Class Counsel*

23  
24 **ATTESTATION**

25 I, Michael W. Sobol, am the ECF user whose identification and password are being used  
26 in this filing. I hereby attest that Hank Bates has concurred in this filing.

27  
28 /s/ Michael W. Sobol

Michael W. Sobol, Esq.



1  
2  
3  
4  
5  
6  
7  
8 **UNITED STATES DISTRICT COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA**  
10 **OAKLAND DIVISION**

11 MATTHEW CAMPBELL and MICHAEL  
12 HURLEY,

13 Plaintiffs,

14 v.

15 FACEBOOK, INC.,

16 Defendant.  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Case No. C 13-05996 PJH-SK

**CLASS ACTION**

**[PROPOSED] ORDER GRANTING  
PRELIMINARY APPROVAL OF CLASS  
ACTION SETTLEMENT**

1 WHEREAS, the above-entitled action is pending before this Court (the “Action”);

2 WHEREAS, the Plaintiffs having moved, pursuant to Federal Rule of Civil Procedure 23(e),  
3 for an order approving the Settlement of this Action, in accordance with the Class Action Settlement  
4 Agreement (“Settlement Agreement”) attached as Exhibit 1 to the Declaration of Class Counsel in  
5 Support of Plaintiffs’ Motion for Preliminary Approval of Class Settlement filed on March 1, 2017,  
6 which sets forth the terms and conditions for a proposed settlement of the Action and for dismissal of  
7 the Action with prejudice upon the terms and conditions set forth therein; and the Court having read  
8 and considered the Settlement Agreement and having heard any argument of counsel; and

9 WHEREAS, all defined terms herein have the same meanings as set forth in the Settlement  
10 Agreement.

11 NOW, THEREFORE, IT IS HEREBY FOUND AND ORDERED:

12 1. This Court has jurisdiction over the subject matter of the Action and over all Parties to  
13 the Action, including all Settlement Class Members.

14 2. The Court does hereby preliminarily approve the Settlement Agreement and the  
15 Settlement set forth therein, subject to further consideration at the Fairness Hearing described below.

16 3. The Court finds on a preliminary basis that the Settlement as set forth in the  
17 Settlement Agreement falls within the range of reasonableness and therefore meets the requirements  
18 for preliminary approval.

19 4. The Court conditionally certifies, for settlement purposes only (and for no other  
20 purpose and with no other effect upon the Action, including no effect upon the Action should the  
21 Settlement Agreement not receive final approval or should the Effective Date not occur), a class  
22 defined as all natural-person Facebook users located within the United States and its territories who  
23 have sent, or received from a Facebook user, private messages that included URLs in their content  
24 (and from which Facebook generated a URL attachment), from December 30, 2011 to March 1, 2017.  
25 The only changes between the Settlement Class and the class certified by the Court on May 18, 2016,  
26 are (1) the explicit inclusion of Facebook users located in United States territories, and (2) bringing  
27 the end of the class period current to the date of settlement. Excluded from the Settlement Class are  
28 (i) all Persons who are directors, officers, and agents of Facebook or its subsidiaries and affiliated

1 companies or are designated by Facebook as employees of Facebook or its subsidiaries and affiliated  
2 companies; and (ii) the Court, the Court's immediate family, and Court staff, as well as any appellate  
3 court to which this matter is ever assigned, and its immediate family and staff.

4 5. The Court finds, for settlement purposes only, that the expansion of the certified class  
5 to include all Settlement Class Members is appropriate under Federal Rule of Civil Procedure  
6 23(b)(2) in the settlement context because (1): the Defendant is alleged to have acted or refused to act  
7 on grounds that apply generally to the Settlement Class, so that the described injunctive and non-  
8 monetary relief is appropriate with respect to the Settlement Class as a whole; and (2): (a) the  
9 Settlement Class Members are so numerous that joinder of all Class Members in the class action is  
10 impracticable; (b) there are questions of law and fact common to the Settlement Class; (c) the claims  
11 of the Class Representatives are typical of the claims of the Class; (d) the Class Representatives and  
12 their counsel will fairly and adequately represent and protect the interests of the Class Members; and  
13 (e) a class action is superior to other available methods for the fair and efficient adjudication of the  
14 controversy.

15 6. The Court finds that, subject to the Fairness Hearing, the Settlement Agreement is fair,  
16 reasonable, adequate, and in the best interests of the Settlement Class. The Court further finds that  
17 the Settlement Agreement substantially fulfills the purposes and objectives of the class action and  
18 provides beneficial relief to the Settlement Class. The Court also finds that the Settlement  
19 Agreement: (a) is the result of serious, informed, non-collusive arms'-length negotiations, involving  
20 experienced counsel familiar with the legal and factual issues of this case and made with the  
21 assistance and supervision of a mediator; (b) meets all applicable requirements of law, including  
22 Federal Rule of Civil Procedure 23, and the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1715;  
23 and (c) is not a finding or admission of liability by Defendant.

24 7. Notice of the settlement is not required here. *See* Fed. R. Civ. P. 23(c)(2)(A) (stating  
25 that under Rule 23(b)(2) the court "*may* direct appropriate notice to the class") (emphasis added).  
26 The Court finds that notice also is not required because the Settlement Agreement only releases  
27 claims for injunctive and/or declaratory relief and does not release the monetary or damages claims of  
28 the Class (*see* Settlement Agreement, ¶ 49), and thus the settlement expressly preserves the individual

1 rights of class members to pursue monetary claims against the defendant. *See, e.g., Lilly v. Jamba*  
2 *Juice Co.*, No. 13-cv-02998-JST, 2015 WL 1248027, at \*8–9 (N.D. Cal. Mar. 18, 2015); *Kim v.*  
3 *Space Pencil, Inc.*, No. 11-cv-03796-LB, 2012 WL 5948951, at \*4, 17 (N.D. Cal. Nov. 28, 2012).

4 8. The Court finds that the CAFA Notice sent by Facebook complied with 28 U.S.C.  
5 § 1715 and all other provisions of the Class Action Fairness Act of 2005.

6 9. Each Settlement Class Member shall be given a full opportunity to comment on or  
7 object to the Settlement Agreement, and to participate at a Fairness Hearing. Comments or  
8 objections must be in writing, and must include (1) the name and case number of the Action  
9 (*Campbell et al. v. Facebook, Inc.*, Case No. 13-5996-PJH); (2) the Settlement Class Member's full  
10 legal name and mailing address; (3) the personal signature of the Settlement Class member; (4) the  
11 grounds for any objection; (5) the name and contact information of any and all attorneys representing,  
12 advising, or assisting with the comment or objection, or who may profit from pursuing any objection;  
13 and (6) a statement indicating whether the Settlement Class Member intends to appear at the Final  
14 Approval Hearing, either personally or through counsel.

15 10. To be considered, written comments or objections must be submitted to the Court  
16 either by mailing them to Class Action Clerk, United States District Court for the Northern District of  
17 California, 1301 Clay Street, Oakland, California 94612, or by filing them in person at any location  
18 of the United States District Court for the Northern District of California, within 60 days after the  
19 entry of this Order. No Class Member shall be entitled to be heard at the Final Approval Hearing,  
20 whether individually or through counsel, unless written notice of the Class Member's intention to  
21 appear at the Final Approval Hearing is timely filed, or postmarked for mail to the Court within 60  
22 days after date of entry of this Order.

23 11. The date of the postmark on the envelope containing the written objection shall be the  
24 exclusive means used to determine whether an objection has been timely submitted. Class Members  
25 who fail to mail timely written objections in the manner specified above shall be deemed to have  
26 waived any objections and shall be forever barred from objecting to the Settlement Agreement and  
27 the proposed settlement by appearing at the Final Approval Hearing, appeal, collateral attack, or  
28 otherwise.

1           12.     The Court appoints Plaintiffs Michael Hurley and Matthew Campbell as the Class  
2     Representatives, and the law firms of Lieff Cabraser Heimann & Bernstein, LLP and Carney Bates &  
3     Pulliam, PLLC as Class Counsel.

4           13.     A hearing (the “Fairness Hearing”) shall be held before this Court on \_\_\_\_\_,  
5     2017, at \_\_\_\_\_.m., at the United States District Court for the Northern District of California, Oakland  
6     Courthouse, Courtroom 3 – 3rd Floor, 1301 Clay Street, Oakland, California 94612, to determine  
7     whether the proposed settlement of the Action on the terms and conditions provided for in the  
8     Settlement Agreement is fair, reasonable, and adequate to the Settlement Class and should be finally  
9     approved by the Court; whether a Final Approval Order and Final Judgment as provided in the  
10    Settlement Agreement should be entered; and to determine any amount of fees, costs, and expenses  
11    that should be awarded to Class Counsel and any award to the Class Representatives for their  
12    representation of, or service on behalf of, the Settlement Class. All Settlement Class Members will  
13    be bound by any Final Approval Order and Final Judgment dismissing the Action with prejudice.

14          14.     Class Counsel’s application for attorneys’ fees, costs and expenses shall be filed and  
15    served no later than thirty (30) days after the Court’s order of preliminary approval. Any opposition,  
16    comment, or objection shall be filed no later than sixty (60) days after the Court’s order of  
17    preliminary approval. Any reply shall be filed no later than seventy-four (74) days after the Court’s  
18    order of preliminary approval.

19          15.     The motion in support of final approval of the settlement shall be filed and served no  
20    later than thirty (30) days after the Court’s order of preliminary approval. Any opposition or  
21    objection shall be filed no later than sixty (60) days after the Court’s order of preliminary approval.  
22    Any reply shall be filed no later than seventy-four (74) days after the Court’s order of preliminary  
23    approval.

24          16.     At or after the Fairness Hearing, the Court shall determine whether any application for  
25    attorneys’ fees, costs and expenses, and any award to the Class Representatives for their  
26    representation of, and service to, the Class, should be approved.

27          17.     Neither this order, the fact that a settlement was reached and filed, the Settlement  
28    Agreement, nor any related negotiations, statements, or proceedings shall be construed as, offered as,

1 admitted as, received as, used as, or deemed to be an admission or concession of liability or  
2 wrongdoing whatsoever or breach of any duty on the part of Defendant. This order is not a finding of  
3 the validity or invalidity of any of the claims asserted or defenses raised in the Action. In no event  
4 shall this order, the fact that a settlement was reached, the Settlement Agreement, or any of its  
5 provisions or any negotiations, statements, or proceedings relating to it in any way be used, offered,  
6 admitted, or referred to in the Action except by the settling Parties and only the settling Parties in a  
7 proceeding to enforce the Settlement Agreement.

8 18. The Court reserves the right to adjourn the date of the Fairness Hearing and retains  
9 jurisdiction to consider all further applications arising out of or connected with the proposed  
10 Settlement. The Court may approve the Settlement, with such modifications as may be agreed to by  
11 the settling Parties, if appropriate, without further notice.

12 19. All discovery and proceedings in this Action are stayed until further order of this  
13 Court, except as may be necessary to implement the Settlement or comply with the terms of the  
14 Settlement Agreement. Settlement Class Members and their Legally Authorized Representatives are  
15 preliminarily enjoined from filing or otherwise participating in any other suit based on the Released  
16 Claims in the Settlement Agreement.

17 20. The Court retains jurisdiction over the Action to consider all further matters arising  
18 out of or connected with the Settlement Agreement and the Settlement described therein.

19  
20 IT IS SO ORDERED.

21  
22 DATED: \_\_\_\_\_

\_\_\_\_\_  
HONORABLE PHYLLIS J. HAMILTON  
UNITED STATES DISTRICT JUDGE

1 Michael W. Sobol (State Bar No. 194857)  
msobol@lchb.com  
2 David T. Rudolph (State Bar No. 233457)  
drudolph@lchb.com  
3 Melissa Gardner (State Bar No. 289096)  
mgardner@lchb.com  
4 LIEFF CABRASER HEIMANN & BERNSTEIN, LLP  
275 Battery Street, 29th Floor  
5 San Francisco, CA 94111-3339  
Telephone: 415.956.1000  
6 Facsimile: 415.956.1008

7 Rachel Geman  
rgeman@lchb.com  
8 Nicholas Diamand  
ndiamand@lchb.com  
9 LIEFF CABRASER HEIMANN & BERNSTEIN, LLP  
250 Hudson Street, 8th Floor  
10 New York, NY 10013-1413  
Telephone: 212.355.9500  
11 Facsimile: 212.355.9592

12 Hank Bates (State Bar No. 167688)  
hbates@cbplaw.com  
13 Allen Carney  
acarney@cbplaw.com  
14 David Slade  
dslade@cbplaw.com  
15 CARNEY BATES & PULLIAM, PLLC  
519 West 7<sup>th</sup> Street  
16 Little Rock, AR 72201  
Telephone: 501.312.8500  
17 Facsimile: 501.312.8505

18 *Attorneys for Plaintiffs and the Class*

19 **UNITED STATES DISTRICT COURT**  
20 **NORTHERN DISTRICT OF CALIFORNIA**

21 MATTHEW CAMPBELL, MICHAEL  
22 HURLEY, on behalf of themselves and all  
others similarly situated,

23 Plaintiffs,

24 v.

25 FACEBOOK, INC.,

26 Defendant.

Case No. C. 13-5996-PJH-SK

**JOINT DECLARATION OF CLASS  
COUNSEL IN SUPPORT OF PLAINTIFFS'  
MOTION FOR PRELIMINARY  
APPROVAL OF CLASS ACTION  
SETTLEMENT**

Date: April 12, 2017

Time: 9:00 a.m

Courtroom: Courtroom 3, 3rd Floor

The Honorable Phyllis J. Hamilton

1 Michael W. Sobol and Hank Bates, under penalty of perjury, submit this Joint Declaration  
2 in support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Joint  
3 Declaration"), and declare as follows:

4 **I. INTRODUCTION**

5 1. Michael W. Sobol is a partner at Lieff, Cabraser, Heimann & Bernstein, LLP  
6 ("LCHB"), and Hank Bates is a partner at Carney Bates & Pulliam, PLLC ("CBP").

7 2. We are counsel to Class Representatives Matthew Campbell and Michael Hurley  
8 ("Plaintiffs" or "Class Representatives") and the Settlement Class in the above-captioned case  
9 (the "Action").

10 3. We submit this Joint Declaration in support of Plaintiffs' Motion for Preliminary  
11 Approval of Class Action Settlement, and have personal knowledge of the matters set forth below  
12 based on our active participation in all aspects of the prosecution and settlement of this litigation.

13 4. In sum, the Settlement requires Facebook to make meaningful business practice  
14 changes that will benefit the Settlement Class now, without the inherent risks of continued  
15 litigation and without requiring Class Members to release any claims they may have for monetary  
16 relief. The Settlement was only reached after years of discovery and months of arm's-length  
17 negotiations and enjoys the support of a neutral mediator who had an integral part in the  
18 settlement negotiations. Consequently, the Settlement satisfies the criteria for preliminary  
19 approval.

20 5. Class Counsel believes that these technical changes are substantial and that these  
21 changes bring Facebook's email processing practices in compliance with Class Counsel's view of  
22 the Electronic Communications Privacy Act, 18 U.S.C. §§ 2510, *et seq.* ("ECPA") and the  
23 California Invasion of Privacy Act, Cal. Penal Code §§ 630, *et seq.* ("CIPA").

24 **II. OVERVIEW OF THE LITIGATION**

25 6. On December 30, 2013, Plaintiffs Matthew Campbell and Michael Hurley filed a  
26 class action complaint in the United States District Court for the Northern District of California  
27 asserting claims under the Electronic Communications Privacy Act ("ECPA"; 18 U.S.C. §§ 2510  
28 *et seq.*); the California Invasion of Privacy Act ("CIPA"; Cal. Penal Code §§ 630, *et seq.*); and



California's Unfair Competition Law ("UCL"; California Business and Professions Code §§ 17200, *et seq.*), alleging, *inter alia*, that Facebook "read[] its users' personal, private Facebook messages without their consent" for "purposes including but not limited to data mining and user profiling," and "generating 'Likes' for web pages" and "targeted advertising," on behalf of themselves and a proposed class of "[a]ll natural person Facebook users located within the United States who have sent or received private messages where such message included URLs in the content, from within two years before the filing of this action up through and including the date of the judgment in this case" (Dkt. 1).

7. On January 21, 2014, plaintiff David Shadpour filed another complaint in the United States District Court for the Northern District of California alleging similar facts and asserting similar claims under ECPA, CIPA and the UCL against Facebook (*see Shadpour v. Facebook, Inc.*, Case No. 5:14-cv-00307-PSG (N.D. Cal.), Dkt. 1).

8. On April 15, 2014, the Court granted Plaintiffs' Motion to Consolidate the Related Actions (*see* Dkt. 24), thereby consolidating the *Campbell* and *Shadpour* actions, and on April 25, 2014, the Class Representatives filed a Consolidated Amended Complaint asserting ECPA, CIPA, and UCL claims on behalf of themselves and a proposed class of "[a]ll natural-person Facebook users located within the United States who have sent or received private messages that included URLs in their content, from within two years before the filing of this action up through and including the date when Facebook ceased its practice" (*see* Dkt. 25).

9. On December 23, 2014, the Court issued an order granting in part and denying in part Facebook's motion to dismiss the Consolidated Amended Complaint, dismissing the claims under CIPA § 632 and the UCL, but denying the motion to dismiss claims under ECPA and CIPA § 631 (*see* Dkt. 43).

10. The Parties engaged in almost two years of extensive discovery, including the production of tens of thousands of pages of documents, fact and expert depositions of 18 witnesses (spanning 19 days of testimony), informal conferences and discussions, hundreds of hours reviewing detailed technical documentation, substantial discovery motion practice and the

1 exchange of hundreds of pages of written discovery requests and responses. A mediation between  
2 the parties before Cathy Yanni of JAMS on August 19, 2015 was unsuccessful.

3 11. On October 2, 2015 David Shadpour voluntarily dismissed his claims, with  
4 prejudice, pursuant to Federal Rule of Civil Procedure 41(a), (Dkt. 123).

5 12. On May 18, 2016, the Court issued an order granting in part and denying in part  
6 Plaintiffs' Motion for Class Certification, denying certification as to the proposed damages class  
7 under Federal Rule of Civil Procedure 23(b)(3), but granting certification of the injunctive-relief  
8 class under Federal Rule of Civil Procedure 23(b)(2). Specifically, the Court certified for class  
9 treatment three specific alleged uses by Facebook of URL's included in private messages: (1)  
10 Facebook's cataloging URL's shared in private messages and counting them as a "like" on the  
11 relevant third-party website, (2) Facebook's use of data regarding URLs shared in private  
12 messages to generate recommendations for Facebook users, and (3) Facebook's sharing of data  
13 regarding URLs in messages (and attendant demographic data about the messages' participants)  
14 with third parties (Dkt. 192 at 3-5).

15 13. In addition, the Court directed the Class Representatives to file a Second Amended  
16 Complaint "(1) revising the class definition to reflect the definition set forth in the class  
17 certification motion, and (2) adding allegations regarding the sharing of data with third parties"  
18 (Dkt. 192 at 6). On June 7, 2016, the Class Representatives filed a revised, Second Amended  
19 Complaint as ordered (*see* Dkt. 196).

20 14. Following the class certification ruling, the parties engaged in additional discovery  
21 and then agreed to further mediate their dispute; first in a second and third session before Cathy  
22 Yanni on July 21, 2016 and July 28, 2016, and then in a fourth session with Randall Wulff on  
23 December 7, 2016. In a Joint Status Report filed on December 23, 2016, the parties informed the  
24 Court that they had reached a settlement-in-principle in the Action. (Dkt. 222). Thereafter, the  
25 parties memorialized the settlement in the Settlement Agreement executed on March 1, 2017 and  
26 filed herewith as **Exhibit 1**.

### 1 **III. THE SETTLEMENT TERMS**

2 15. In consideration for the dismissal of the Action with prejudice and the releases  
3 provided in this Settlement Agreement, Facebook agrees to the following:

4 a. Cessation of the Three URL Uses Relevant to this Class Action: In the  
5 Settlement Agreement, Facebook confirms that the following uses of data from EntShares created  
6 from URLs sent in Facebook Messages during the Class Period have ceased, as of the dates set  
7 forth below specific to each use:

8 i. “Like” Count Increment: From the beginning of the Class Period  
9 until on or about December 19, 2012, Facebook source code was engineered so that when an  
10 anonymous, aggregate count was displayed next to a “Like” button on a third-party web page,  
11 that count often included, *inter alia*, the number of times a URL related to that particular website  
12 had been shared by Facebook users in Facebook Messages and resulted in creation of an  
13 EntShare. On or about December 19, 2012, Facebook changed its source code such that the  
14 external count no longer included the number of shares, by users, of URLs in private messages  
15 that resulted in creation of EntShares. Settlement Agreement ¶ 40(a)(i).

16 ii. Sharing of URL Data with Third Parties: Facebook makes its  
17 “Insights” user interface and related API available to owners of third-party websites that choose to  
18 include Facebook tools or features, for purposes of providing anonymous, aggregate data about  
19 interaction with and traffic to their websites. During certain periods of time during the Class  
20 Period, this information included anonymous, aggregate statistics and demographic information  
21 about users who shared links to those sites across the Facebook platform. From the beginning of  
22 the Class Period until on or about October 11, 2012, the anonymous, aggregate statistics and  
23 demographic information included information about users who shared URLs in Facebook  
24 Messages that resulted in creation of EntShares. On or about October 11, 2012, Facebook changed  
25 its source code such that it ceased including information about URL shares in Facebook Messages  
26 that resulted in creation of EntShares (and attendant statistics and demographic information) within  
27 Insights and its related API. Settlement Agreement ¶ 40(a)(ii).

28

iii. Use of URL Data to Generate Recommendations: Facebook's Recommendations Feed was a social plugin offered to developers that displayed a list of URLs representing the most recommended webpages on that developer's site. Over time, two different units of Facebook source code determined the list of URLs that would appear in the Recommendations Feed for a given webpage at a given time. One of those units of Facebook source code was the "PHP backend." Although, during the Class Period, the PHP backend was not the primary system determining the list of URLs that would appear in the Recommendations Feed, the PHP backend served as a backup system if the primary system failed. The PHP backend considered, *inter alia*, an anonymous, aggregate count of, *inter alia*, the number of times a URL had been shared in a Facebook Message and resulted in creation of an EntShare. On or about July 9, 2014, Facebook changed its code such that it ceased utilizing the PHP backend as the backup system for its Recommendations Feed. Settlement Agreement ¶ 40(a)(iii).

iv. Use of EntShares created from URLs in Messages: Facebook confirms that, as of the date of execution of the Settlement Agreement, it is not using any data from EntShares created from URL attachments sent by users in Facebook Messages for: 1) targeted advertising; 2) sharing personally identifying user information with third parties; 3) use in any public counters in the "link\_stats" and Graph APIs; and 4) displaying lists of URLs representing the most recommended webpages on a particular web site. Settlement Agreement ¶ 40(b).

b. Disclosure Changes: Facebook implemented enhanced disclosures after the filing of this Action that benefited the Class. Specific to the private message function, in January 2015, Facebook revised its Data Policy to disclose that Facebook collects the "content and other information" that people provide when they "message or communicate with others," and to further explain the ways in which Facebook may use that content. Settlement Agreement ¶ 40(c).

c. Additional Explanatory Language: Facebook shall display the following, additional language, without material variation, on its United States website for Help Center materials concerning messages within 30 days of the Effective Date: "We use tools to identify and store links shared in messages, including a count of the number of times links are shared." Facebook will make this additional language available on its United States website for a period of

one year from the date it is posted, provided however that Facebook may update the disclosures to ensure accuracy with ongoing product changes. Settlement Agreement ¶ 40(d).

16. For purposes of the provisional certification, the Settlement Class shall be defined as follows:

All natural-person Facebook users located within the United States and its territories who have sent, or received from a Facebook user, private messages that included URLs in their content (and from which Facebook generated a URL attachment), from December 30, 2011 to March 1, 2017.

#### IV. QUALIFICATIONS OF CLASS COUNSEL

17. As exemplified in each firm's respective firm resume, Class Counsel have extensive experience litigating and settling consumer class actions and other complex matters. Each firm has held significant leadership roles in prominent class actions throughout the United States. Collectively, Class Counsel have assisted putative class members in recovering billions of dollars.

##### A. Qualifications of Michael W. Sobol

18. Michael W. Sobol is a 1989 graduate of Boston University School of Law. He practiced law in Massachusetts from 1989 to 1997. From 1995 through 1997, he was a Lecturer in Law at Boston University School of Law. In 1997, he left his position as partner in the Boston firm of Shafner, Gilleran & Mortensen, P.C. to move to San Francisco, where he joined LCHB. Since joining LCHB in 1997, he has almost exclusively represented plaintiffs in consumer protection class actions. Mr. Sobol has been a partner with LCHB since 1999, and is in his fifteenth years as chair of LCHB's consumer practice group. A copy of LCHB's firm resume, which describes the firm's experience in class action and other complex litigation, can be found at <http://www.lchbdocs.com/pdf/finn-resume.pdf> and is not attached hereto given its length.

19. During his time at LCHB, Mr. Sobol has overseen a wide range of consumer protection litigation and has served as plaintiffs' class counsel in numerous nationwide consumer class action cases. The following cases are representative examples of class actions in which he has played a leadership role:

a. Mr. Sobol served as co-lead class counsel in *Gutierrez v. Wells Fargo*

1 *Bank, N A.*, No. C 07-05923 WHA (N.D. Cal.), a class action alleging unfair practices and false  
 2 representations by Wells Fargo in connection with its imposition of overdraft charges. In 2013,  
 3 the court reinstated a \$203 million class judgment that had been entered in 2010 following a  
 4 bench trial, and in 2014 the reinstated judgment was affirmed by the Ninth Circuit. Judge Alsup  
 5 noted that LCHB “performed at a superior level as class trial counsel” and that LCHB’s trial  
 6 performance “ranks as one of the best this judge has seen in sixteen years on the bench.”

7 *Gutierrez v. Wells Fargo Bank, N A.*, No. C 07-05923 WHA, 2015 WL 2438274, at \*1, 7 (N.D.  
 8 Cal. May 21, 2015). In 2011, Mr. Sobol was named a finalist of the Consumer Attorneys of  
 9 California’s (“CAOC”) Consumer Attorney of the Year award for his work in this case.

10 b. Mr. Sobol served on the Plaintiffs’ Executive Committee in *In re Checking*  
 11 *Account Overdraft Litigation*, MDL 2036 (S.D. Fla.), a multidistrict proceeding involving more  
 12 than two dozen banks and allegations of unfair practices and false representations in connection  
 13 with the banks’ imposition of overdraft charges. Class settlements totaling over a billion dollars  
 14 have been approved by the court to date. In 2012, Mr. Sobol was named as a finalist for Trial  
 15 Lawyer of the Year by Public Justice for his work in this litigation. The same year, Mr. Sobol  
 16 was again named a finalist by CAOC for the Consumer Attorney of the Year award for his work  
 17 in *Yourke v. Bank of America*, a case that was a part of the MDL which resulted in a settlement of  
 18 \$410 million.

19 c. Mr. Sobol served as Plaintiffs’ Liaison Counsel and on the Plaintiffs’  
 20 Executive Committee in *In re Chase Bank USA, N A. “Check Loan” Contract Litigation*, MDL  
 21 No. 2032 (N.D. Cal.), a nationwide multidistrict class action alleging that Chase breached its  
 22 good faith obligation to credit cardholders by modifying the terms of their long-term fixed rate  
 23 loans. In November 2012, the court granted final approval to a \$100 million nationwide  
 24 settlement that provides direct payments to approximately one million cardholders and important  
 25 injunctive relief. In 2013, Mr. Sobol was again named a finalist for CAOC’s Consumer Attorney  
 26 of the Year award for his efforts in this litigation

27 d. Mr. Sobol served as co-class counsel in *Ebarle v. LifeLock, Inc.*, Case No.  
 28 15-cv-00258-HSG (N.D. Cal.), a class action alleging that LifeLock misrepresented certain

1 aspects of its identity theft protection services to its subscribers. On September 20, 2016, Judge  
 2 Gilliam granted final approval of a settlement providing \$68 million total to settlement class  
 3 members, with attorneys' fees and settlement administration cost being paid by LifeLock on top  
 4 of this \$68 million fund.

5 e. Mr. Sobol served as Interim Co-Lead Class Counsel in *Corona v. Sony*  
 6 *Pictures Entertainment, Inc.*, No. 14-cv-9600 (C.D. Cal.), a case arising out of a breach of Sony's  
 7 computer networks causing highly-sensitive and personally identifiable information of thousands  
 8 of Sony employees to be stolen and made public, exposing class members to long-term risk of  
 9 identity theft and credit fraud. Final approval of a settlement providing for \$2 million to  
 10 compensate employees who had taken preventative measures to protect themselves and providing  
 11 for an additional two years of identity theft protection services was granted on April 6, 2016.

12 f. Mr. Sobol served as co-class counsel in *In re TracFone Unlimited Service*  
 13 *Plan Litigation*, Case No. 13-cv-03440-EMC (N.D. Cal.), a class action alleging that *TracFone*  
 14 falsely advertised its cell phone plans as providing "unlimited" data when it imposed secret data  
 15 caps on the plans, pursuant to which it would throttle (*i.e.* severely slow down) or suspend  
 16 consumers' data. On July 2, 2015, Judge Chen granted final approval to a \$40 million settlement  
 17 which included industry-leading business practice changes.

18 g. Mr. Sobol served as class counsel in *Brazil v. Dell Inc.*, No. C-07-01700  
 19 RMW (N.D. Cal.), a class action alleging false reference price advertising in connection with  
 20 defendant's online sale of computers. This was the first class action of its kind to receive  
 21 certification, and resulted in a settlement which allowed class members to submit claims for \$50  
 22 payments and also included important practice changes

23 h. Mr. Sobol served as Lead Plaintiffs' Counsel in *In re Apple and AT&T*  
 24 *iPad Unlimited Data Plan Litigation*, No. 10-cv-02553 RMW (N.D. Cal.), a class action alleging  
 25 that defendants falsely advertised access to an unlimited data plan for the iPad device. In 2014,  
 26 the court granted final approval of a settlement which allowed class members to submit claims for  
 27 \$40 payments and provided other benefits to class members.

28 i. Mr. Sobol served as co-lead counsel in *Yarrington v. Solvay*



1 *Pharmaceuticals, Inc.*, No. 09-CV-2261 (D. Minn.), a class action alleging that Solvay  
2 deceptively marketed and advertised Estratest as an FDA-approved drug when in fact Estratest  
3 was not FDA-approved for any use. In March 2010, the court granted final approval to a \$16.5  
4 million settlement, pursuant to which consumers obtained partial refunds of up to 30% of the  
5 purchase price paid for Estratest.

6 j. Mr. Sobol was co-lead plaintiffs' counsel in *Morris v. AT&T Wireless*  
7 *Services, Inc.*, No. C-04-1997-MJP (W.D. Wash.), a case alleging that a nationwide class of cell  
8 phone customers was subjected to an end-of-billing cycle cancellation policy implemented by  
9 AT&T Wireless, thereby breaching customers' service agreements. On May 19, 2006, the New  
10 Jersey Superior Court granted final approval to a class settlement that guaranteed delivery to the  
11 class of \$40 million in benefits.

12 k. Mr. Sobol served as co-class counsel in *Pakeman, et al. v. American*  
13 *Honda Finance Corporation* (M.D. Tenn.), a case raising race discrimination claims under the  
14 Equal Credit Opportunity Act. On April 18, 2005, court granted final approval of a class  
15 settlement requiring defendant to establish a refinance program applicable to \$1 billion of its  
16 existing loan portfolio under which African Americans and Hispanic Americans are eligible for a  
17 reduction on their auto loan interest rate. The settlement also imposed a limit to the amount of  
18 "mark-up" lenders can impose on interest rates, increased the transparency of consumer  
19 disclosures, and funded consumer education programs. The monetary benefit to the class was  
20 estimated to be between about \$47 million to \$72 million.

21 l. Mr. Sobol served as co-lead plaintiffs' counsel in Reverse Mortgage Cases,  
22 J.C.C.P. No. 4061 (San Mateo Sup. Ct.), an action brought against Transamerica alleging that it  
23 targeted senior citizens to market and sell "reverse mortgages" which were misleading as to loan  
24 terms and contained unfair charges and fees. A nationwide settlement provided relief to  
25 approximately 1600 members of the class averaging about \$5,000 per class member, with some  
26 class members receiving many times that amount.



1           **B.     Qualifications of Hank Bates**

2           20.     Hank Bates is a partner at CBP, a national law firm based in Little Rock,  
3     Arkansas. CBP is recognized as one of the country's premiere firms in the areas of consumer  
4     protection class actions, data privacy/security, securities fraud, environmental law and  
5     employment discrimination. A copy of CBP's firm resume, which describes the firm's  
6     experience in class action and other complex litigation is available at  
7     <http://www.cbplaw.com/firm-resume/>.

8           21.     Since joining CBP in 2004, Mr. Bates has focused his practice on representing  
9     consumers, small businesses, governmental entities, farmers and shareholders in class actions and  
10    complex litigation involving consumer fraud, computer privacy, environmental law, and  
11    employment rights. He received his B.A. from Harvard University in 1987 and his J.D. from  
12    Vanderbilt University School of Law in 1992. Following law school, Mr. Bates was a law clerk  
13    for the Honorable Danny J. Boggs, United State Court of Appeals for the Sixth Circuit. Mr. Bates  
14    practiced public-interest environmental law in San Francisco, California from 1993 to 1997, first  
15    with the law firm of Shute, Mihaly & Weinberger and then with Earthjustice, before returning to  
16    his home state of Arkansas. Below is a sampling of class actions and complex litigation  
17    throughout the nation in which Mr. Bates and CBP are currently playing a leadership role

18           a.     CBP served as Co-Lead Counsel in *Ebarle, et al. v. LifeLock, Inc.*, 3: 15-  
19    cv-00258 (N.D. Cal.), a class action alleging that LifeLock misrepresented certain aspects of its  
20    identity theft protection services to its subscribers. On September 20, 2016, Judge Gilliam  
21    granted final approval of a settlement providing \$68 million total to settlement class members,  
22    with attorneys' fees and settlement administration cost being paid by LifeLock on top of this \$68  
23    million fund.

24           b.     CBP serves on the Plaintiffs' Steering Committee in *In re: The Home*  
25    *Depot, Inc., Customer Data Security Breach Litigation*, 1:14-md-02583-TWT (N.D. Ga.), a  
26    putative class action brought on behalf of injured financial institutions in the wake of a massive  
27    retailer data breach.

28           c.     CBP served as Counsel for Lead Plaintiff Umpqua Bank in *In re: Target*

1 *Corporation Customer Data Security Breach Litigation*, 0:14-cmd-02522-PAM-JJK (D. Minn.), a  
 2 recently-settled class of financial institution plaintiffs over injuries suffered from one of the  
 3 largest data breaches in history. A settlement, valued at \$39.4 million, was granted final approval  
 4 by the Court on May 12, 2016 and settlement administration is ongoing

5 d. CBP served as Co-Counsel in *Corona v. Sony Pictures Entertainment, Inc.*,  
 6 No. CV 14-09600-RGK (Ex) (C.D. Cal.), a case arising out of a breach of Sony's computer  
 7 networks causing highly-sensitive and personally identifiable information of thousands of Sony  
 8 employees to be stolen and made public, exposing class members to long-term risk of identity  
 9 theft and credit fraud. Final approval of a settlement providing for \$2 million to compensate  
 10 employees who had taken preventative measures to protect themselves and providing for an  
 11 additional two years of identity theft protection services was granted on April 6, 2016.

12 e. CBP is Co-Lead Counsel in *Daniel, et al. v. Ford Motor Company*, 2: 11-  
 13 02890 WBS EFB (E.D. Cal.), a class action alleging violations of the Song-Beverly Consumer  
 14 Warranty Act, the Magnuson-Moss Warranty Act, California's Consumers Legal Remedies Act,  
 15 and California's Unfair Competition Law arising from an alleged rear suspension defect in Ford  
 16 Focus model years 2005 through 2011. The Court has certified the class; CBP successfully  
 17 opposed Ford's Motion for Summary Judgment; and the class action trial is set for September  
 18 2017.

19 f. CBP is Co-Lead Counsel in *Jensen, et al. v Cablevision Systems*  
 20 *Corporation*, 2:17-cv-00100-ADS-AKT (E.D.N.Y.), a putative class action alleging violations of  
 21 the federal Computer Fraud and Abuse Act, arising from the defendant's practice of providing its  
 22 residential customers with wireless routers that secretly emit secondary, public Wi-Fi networks  
 23 over which the individual consumer had no control.

24 g. CBP is Co-Counsel in *Wayne Miner et al. v. Philip Morris USA Inc.*,  
 25 Circuit Court of Pulaski County, Arkansas, Case No. 60-CV-03-4661, a class action brought on  
 26 behalf of Arkansas smokers over claims that the defendant misrepresented the safety of its "light"  
 27 cigarette products, which settled in 2016 for \$45 million.

28 h. CBP is Co-Lead Counsel in *Williams, et al. v. State Farm Mutual*

1 *Automobile Ins. Co.*, 4:11-cv-00749 KGB (E.D. AR), a class action alleging State Farm violated  
 2 Arkansas subrogation law by receiving subrogation payments of medical payment and/or personal  
 3 injury protection coverage from customers' settlements without first obtaining a judicial  
 4 determination and/or agreement that the customer was made whole. The Court has certified the  
 5 class; class notice has been completed; CBP successfully opposed State Farm's Motion for  
 6 Summary Judgment; and the Court was recently notified that the parties have reached a  
 7 settlement.

8 i. CBP is Co-Lead Counsel in *Walker, et al. v. Bank of the Ozarks*, CV-11-77  
 9 (Ark.), a putative class action alleging violations of the Arkansas Deceptive Trade Practices Act,  
 10 the duty of good faith and fair dealing resulting from Bank of the Ozarks' unfair and  
 11 unconscionable assessment and collection of excessive overdraft fees. On March 17, 2016, the  
 12 Arkansas Supreme Court affirmed the lower court's denial of Bank of the Ozarks motion to  
 13 compel arbitration.

14 j. In addition to the above, CBP has successfully litigated several other  
 15 prominent class actions throughout the nation, a few of which include:

16 k. *In re Bank of America Credit Protection Marketing & Sales Practices*  
 17 *Litig.*, United States District Court for the Northern District of California, Case No. 11-md-2269-  
 18 THE (member of Plaintiffs' Executive Committee; \$20 million settlement).

19 l. *In re DQE, Inc. Securities Litigation*, United States District Court, Western  
 20 District of Pennsylvania, Case No. 01-1851 (Co-Lead Counsel; \$12 million settlement).

21 m. *Esslinger v. HSBC Bank Nevada*, United States District Court for the  
 22 Eastern District of Pennsylvania, Case No. 2:10-cv-03213-BMS (Co-Lead Counsel; \$23.5  
 23 million settlement).

24 n. *Kardonick v. JPMorganChase*, United States District Court for the  
 25 Southern District of Florida, Case No. 1:10-cv-23235-WMH (Co-Lead Counsel; \$20 million  
 26 settlement).

27 o. *In re Lernout & Hauspie Securities Litigation*, United States District Court  
 28 for the District of Massachusetts, No. OO-CV-11589-PBS (Co-Lead Counsel; \$115 million

1 settlement).

2 p. *In re Liberty Refund Anticipation Loan Litig.*, United States District Court  
3 for the Northern District of Illinois, Case No. 1:12-cv-02949 (Co-Lead Counsel; \$5.3 million  
4 settlement).

5 q. *Middlesex County Retirement System v. Semtech Corp. et al.*, United States  
6 District Court for the Southern District of New York, Case No. 07-cv-7183 (DC) (Co-Lead  
7 Counsel; \$20 million settlement).

8 r. *Spinelli v. Capital One Bank (USA), et al.*, United States District Court for  
9 the Middle District of Florida, Case No. 8:08-cv-132-T-33EAJ (Co-Lead Counsel; more than  
10 \$100 million settlement).

11 s. *In re Sterling Financial Corporation Securities Class Action*, United States  
12 District Court of the Southern District of New York, Case No. CV 07-2171 (Co-Lead Counsel;  
13 \$10.25 million settlement).

14 t. *Nelson v. Wal-Mart Stores, Inc.*, Eastern District of Arkansas, Case No.  
15 04- 00171, (Co-Lead Counsel; \$17.5 million in recovery, as well as significant changes to Wal-  
16 Mart's hiring policies and four years of court supervision of the settlement terms).

17 u. *The Quapaw Tribe of Oklahoma v. Blue Tee Corp.*, United States District  
18 Court for the Northern District of Oklahoma, Case No.03-cv-0846-CVE-PJC (Co-Lead Counsel;  
19 \$11.5 million settlement).

## 20 **V. RECOMMENDATION OF CLASS COUNSEL**

21 22. Class Counsel had a wealth of information at their disposal before entering into  
22 settlement negotiations, which allowed Class Counsel to adequately assess the strengths and  
23 weaknesses of Plaintiffs' case and balance the benefits of settlement against the risks of further  
24 litigation. The parties conducted extensive discovery. For example, Class Counsel served and  
25 reviewed responses to dozens of written discovery requests; reviewed tens of thousands of  
26 documents and millions of lines of source code. Further, the parties took some 18 depositions.

23. Against this backdrop, Class Counsel have weighed the benefits of the Settlement against the inherent risks and expense of continued litigation, and believe that the proposed Settlement is fair, reasonable, adequate, and in the best interest of the Class.

24. Facebook has vigorously denied Plaintiffs' allegations of wrongdoing, and, absent settlement, Plaintiffs anticipate Facebook would defend this action aggressively at multiple procedural steps prior to trial, including a motion for summary judgment. While Plaintiffs strongly believe in the merits of their case, they recognize that the law is in relative infancy in the context of ECPA's and CIPA's application to email communications, and this uncertainty presents at least some element of risk at multiple, critical junctures in this Action.

25. The outcome of continued litigation, including trial and likely appeals, is far from certain, could add years to this litigation, and would entail significant expense. In contrast, the Settlement provides significant, immediate benefits to the Settlement Class.

26. Accordingly, Class Counsel believe the Settlement to be fair, adequate, and reasonable.

## **VI. CONCLUSION**

27. In sum, the settlement negotiations in this Action were conducted at arm's length by informed and experienced counsel for both parties, spanned seven months, and included numerous mediation sessions before reputable mediators who had an integral part in the settlement negotiations. Further, the Settlement provides a significant benefit to the Class now, without the inherent risk, expense, delay, and uncertainty of continued litigation.

28. Consequently, Class Counsel believe the proposed Settlement is fair, reasonable, and adequate, and should be preliminarily approved by the Court.

We declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on this 1st day of March, 2017.

San Francisco, California

/s/ Michael W. Sobol  
Michael W. Sobol, Esq.  
Lieff Cabraser Heimann & Bernstein, LLP

1 Little Rock, Arkansas

/s/ Hank Bates

2 Hank Bates, Esq.

3 Carney Bates & Pulliam, PLLC

4 **ATTESTATION**

5 I, Michael W. Sobol, am the ECF user whose identification and password are being used  
6 to file this Joint Declaration. I hereby attest that Hank Bates has concurred in this filing.

7 /s/ Michael W. Sobol

8 Michael W. Sobol, Esq.

# **EXHIBIT 1**

LIEFF CABRASER HEIMANN &  
BERNSTEIN, LLP  
Michael W. Sobol, SBN 194857  
msobol@lchb.com  
David T. Rudolph, SBN 233457  
drudolph@lchb.com  
Melissa Gardner, SBN 289096  
mgardner@lchb.com  
275 Battery Street, 29th Floor  
San Francisco, CA 94111-3339  
Telephone: 415.956.1000  
Facsimile: 415.956.1008

CARNEY BATES & PULLIAM, PLLC  
Hank Bates, SBN 167688  
hbates@cbplaw.com  
Allen Carney  
acarney@cbplaw.com  
David Slade  
dslade@cbplaw.com  
519 W. 7<sup>th</sup> Street  
Little Rock, AR 72201  
Telephone: 501.312.8500  
Facsimile: 501.312.8505

*Attorneys for Plaintiffs and the Class*

GIBSON, DUNN & CRUTCHER LLP  
JOSHUA A. JESSEN, SBN 222831  
JJessen@gibsondunn.com  
JEANA BISNAR MAUTE, SBN 290573  
JBisnarMaute@gibsondunn.com  
ASHLEY M. ROGERS, SBN 286252  
ARogers@gibsondunn.com  
1881 Page Mill Road  
Palo Alto, CA 94304  
Telephone: (650) 849-5300  
Facsimile: (650) 849-5333

GIBSON, DUNN & CRUTCHER LLP  
CHRISTOPHER CHORBA, SBN 216692  
CChorba@gibsondunn.com  
333 South Grand Avenue  
Los Angeles, CA 90071  
Telephone: (213) 229-7000  
Facsimile: (213) 229-7520

*Attorneys for Defendant Facebook, Inc.*

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**OAKLAND DIVISION**

MATTHEW CAMPBELL and MICHAEL  
HURLEY, on behalf of themselves and all  
others similarly situated,

Plaintiffs,

v.

FACEBOOK, INC.,

Defendant.

Case No. C 13-05996 PJH-SK

**CLASS ACTION SETTLEMENT  
AGREEMENT AND RELEASE**

Judge Phyllis J. Hamilton



**TABLE OF CONTENTS**

	<u>Page</u>
I. RECITALS .....	1
II. DEFINITIONS .....	4
III. SETTLEMENT CLASS CERTIFICATION.....	6
IV. SETTLEMENT CONSIDERATION AND INJUNCTIVE RELIEF.....	7
V. SUBMISSION OF THE SETTLEMENT AGREEMENT TO THE COURT FOR REVIEW AND APPROVAL.....	9
VI. RELEASES AND DISMISSAL OF ACTION .....	11
VII. NOTICE PURSUANT TO 28 U.S.C. § 1715 .....	14
VIII. ATTORNEYS' FEES AND COSTS .....	14
IX. MODIFICATION OR TERMINATION OF SETTLEMENT AGREEMENT AND FACEBOOK'S RESERVATION OF RIGHTS.....	16
X. MISCELLANEOUS PROVISIONS.....	18

**CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE**

This Class Action Settlement Agreement and Release, including Exhibits A-B hereto (“Settlement Agreement” or “Agreement”), is made and entered into by, between, and among Plaintiffs Matthew Campbell and Michael Hurley (together, “Class Representatives”), on behalf of themselves and the Settlement Class as defined below, and Defendant Facebook, Inc. (“Defendant” or “Facebook”). Class Representatives, the Settlement Class, and Facebook (collectively, the “Parties”) enter into this Agreement to effect a full and final settlement and dismissal of *Campbell, et al. v. Facebook, Inc.*, Case No. 13-cv-05996 PJH-SK (N.D. Cal.) (the “Action”).

**I. RECITALS**

1. WHEREAS, on December 30, 2013, Class Representatives Matthew Campbell and Michael Hurley filed a class action complaint in the United States District Court for the Northern District of California asserting claims under the Electronic Communications Privacy Act (“ECPA”; 18 U.S.C. § 2510, *et seq.*); the California Invasion of Privacy Act (“CIPA”; Cal. Penal Code § 630, *et seq.*); and California’s Unfair Competition Law (“UCL”; California Business and Professions Code § 17200, *et seq.*), alleging, *inter alia*, that Facebook “read[] its users’ personal, private Facebook messages without their consent” for “purposes including but not limited to data mining and user profiling,” “generating ‘Likes’ for web pages,” and “targeted advertising,” on behalf of themselves and a proposed class of “[a]ll natural person Facebook users located within the United States who have sent or received private messages where such message included URLs in the content, from within two years before the filing of this action up through and including the date of the judgment in this case” (*see* Dkt. 1);

2. WHEREAS, on January 21, 2014, plaintiff David Shadpour filed another complaint in the United States District Court for the Northern District of California alleging similar facts and asserting similar classwide claims under CIPA and the UCL against Facebook (*see Shadpour v. Facebook, Inc.*, Case No. 5:14-cv-00307-PSG (N.D. Cal.), Dkt. 1);

3. WHEREAS, on April 15, 2014, the Court granted Plaintiffs’ Motion to Consolidate the Related Actions (*see* Dkt. 24), thereby consolidating the *Campbell* and *Shadpour* actions, and on April 25, 2014, the plaintiffs filed a Consolidated Amended Complaint asserting ECPA, CIPA, and

UCL claims on behalf of themselves and a proposed class of “[a]ll natural-person Facebook users located within the United States who have sent or received private messages that included URLs in their content, from within two years before the filing of this action up through and including the date when Facebook ceased its practice” (*see* Dkt. 25);

4. WHEREAS, on December 23, 2014, the Court issued an order granting in part and denying in part Facebook’s motion to dismiss the Consolidated Amended Complaint, dismissing the claims under CIPA § 632 and the UCL, but denying the motion to dismiss claims under ECPA and CIPA § 631 (*see* Dkt. 43);

5. WHEREAS, the Parties engaged in almost two years of extensive discovery, including the production of tens of thousands of pages of documents and other electronic discovery, fact and expert depositions of 18 witnesses (spanning 19 days of testimony), informal conferences and discussions, substantial discovery motion practice, and the exchange of hundreds of pages of written discovery requests and responses;

6. WHEREAS, on October 2, 2015 David Shadpour voluntarily dismissed his lawsuit and claims pursuant to Federal Rule of Civil Procedure 41(a), which action was unopposed by Facebook (Dkt. 123);

7. WHEREAS, on May 18, 2016, the Court issued an order granting in part and denying in part Plaintiffs’ Motion for Class Certification, denying certification as to the proposed damages class under Federal Rule of Civil Procedure 23(b)(3), but granting certification of the following injunctive-relief class under Federal Rule of Civil Procedure 23(b)(2):

All natural-person Facebook users located within the United States who have sent, or received from a Facebook user, private messages that included URLs in their content (and from which Facebook generated a URL attachment), from within two years before the filing of this action up through the date of the certification of the class.

and additionally appointing Lief Cabraser Heimann & Bernstein, LLP and Carney Bates & Pulliam, PLLC as class counsel and Matthew Campbell and Michael Hurley as class representatives (Dkt. 192);

8. WHEREAS, in its order granting in part and denying in part Plaintiffs’ Motion for Class Certification, the Court directed the Class Representatives to file a Second Amended Complaint

1 “(1) revising the class definition to reflect the definition set forth in the class certification motion, and  
2 (2) adding allegations regarding the sharing of data with third parties” (Dkt. 192), and, on June 7,  
3 2016, the Class Representatives filed a revised, Second Amended Complaint as ordered (*see* Dkt.  
4 196);

5 9. WHEREAS, following the class certification ruling, the Parties engaged in additional  
6 discovery and then agreed to further mediate their dispute;

7 10. WHEREAS, Class Representatives believe that their claims are meritorious and that  
8 they would be successful at trial, but nevertheless agreed to resolve the Action on the terms set forth  
9 in this Settlement Agreement solely to eliminate the uncertainties and delay of further protracted  
10 litigation;

11 11. WHEREAS, Facebook denies the allegations in the Second Amended Complaint,  
12 denies that it has engaged in any wrongdoing, denies that the Class Representatives’ allegations state  
13 valid claims, denies that a class was properly certified in the Action, denies that Plaintiffs can  
14 maintain a class action for purposes of litigation, and vigorously disputes that Class Representatives  
15 and the Class are entitled to any relief, but Facebook nevertheless agreed to resolve the Action on the  
16 terms set forth in this Settlement Agreement solely to eliminate the uncertainties, burden, expense,  
17 and delay of further protracted litigation;

18 12. WHEREAS, Class Representatives, Facebook, and the Settlement Class intend for this  
19 Settlement Agreement fully and finally to compromise, resolve, discharge, and settle the Released  
20 Claims, as defined and on the terms set forth below, and to the full extent reflected herein, subject to  
21 the approval of the Court; and

22 13. NOW, THEREFORE, IT IS HEREBY STIPULATED, CONSENTED TO, AND  
23 AGREED, by the Class Representatives, for themselves and on behalf of the Settlement Class, and by  
24 Facebook that, subject to the approval of the Court, the Action shall be settled, compromised, and  
25 dismissed, on the merits and with prejudice, and the Released Claims shall be finally and fully  
26 compromised, settled, and dismissed as to the Released Parties, in the manner and upon the terms and  
27 conditions hereafter set forth in this Agreement.  
28

**II. DEFINITIONS**

14. In addition to the terms defined elsewhere in this Agreement, the following terms, used in this Settlement Agreement, shall have the meanings specified below:

15. “Action” means the consolidated class action lawsuit captioned *Campbell v. Facebook, Inc.*, Case No. 13-cv-05996 PJH-SK (N.D. Cal.).

16. “Attorneys’ Fees and Costs Award” means such funds as may be awarded by the Court to Class Counsel to compensate Class Counsel for its fees, costs, and expenses in connection with the Action and the Settlement, as described in Paragraphs 57–59.

17. “Class Counsel” means the law firms of Lief Cabraser Heimann & Bernstein, LLP and Carney Bates & Pulliam, PLLC and Plaintiffs’ attorneys of record in this Action who are members of those two firms.

18. “Class Period” means the period from December 30, 2011 to March 1, 2017.

19. “Class Representatives” means Matthew Campbell and Michael Hurley.

20. “Court” means the United States District Court for the Northern District of California and the Judge assigned to the Action, United States Judge Phyllis J. Hamilton.

21. “Defense Counsel” means the law firm of Gibson, Dunn & Crutcher LLP and all of Facebook’s attorneys of record in the Action.

22. “Effective Date” means seven (7) days after which both of the following events have occurred: (i) the Final Approval Order and Final Judgment have been entered and (ii) the Final Approval Order and Final Judgment have become Final.

23. “Facebook” means (i) Facebook, Inc. and its past, present, and future parents, subsidiaries, affiliates, divisions, joint ventures, licensees, franchisees, and any other legal entities, whether foreign or domestic, that are owned or controlled by Facebook, and (ii) the past, present, and future shareholders, officers, directors, members, agents, employees, independent contractors, consultants, representatives, fiduciaries, insurers, attorneys, legal representatives, predecessors, successors, and assigns of the entities in Part (i) of this definition.

24. “Fairness Hearing” means the hearing that is to take place after the entry of the Preliminary Approval Order for purposes of: (i) entering the Final Approval Order and Final

Judgment and dismissing the Action with prejudice; (ii) determining whether the Settlement should be approved as fair, reasonable, and adequate; (iii) ruling upon an application for Service Awards by the Class Representatives; (iv) ruling upon an application by Class Counsel for an Attorneys' Fees and Costs Award; and (v) entering any final order awarding Attorneys' Fees and Costs and Service Awards. The Parties shall request that the Court schedule the Fairness Hearing for a date that is in compliance with the provisions of 28 U.S.C. § 1715(d).

25. "Final" means, with respect to any judicial ruling or order, that: (1) if no appeal, motion for reconsideration, reargument and/or rehearing, or petition for writ of certiorari has been filed, the time has expired to file such an appeal, motion, and/or petition; or (2) if an appeal, motion for reconsideration, reargument and/or rehearing, or petition for a writ of certiorari has been filed, the judicial ruling or order has been affirmed with no further right of review, or such appeal, motion, and/or petition has been denied or dismissed with no further right of review. Any proceeding or order, or any appeal or petition for a writ of certiorari pertaining solely to any application for attorneys' fees or expenses will not in any way delay or preclude the Judgment from becoming Final.

26. "Final Approval Order and Final Judgment" means the order finally approving the terms of this Settlement Agreement and a separate judgment to be entered by the Court, pursuant to Federal Rule of Civil Procedure 58(a), dismissing the Action with prejudice, without material variation from Exhibit A.

27. "Legally Authorized Representative" means an administrator/administratrix, personal representative, or executor/executrix of a deceased Settlement Class Member's estate; guardian, conservator, or next friend of an incapacitated Settlement Class Member; or any other legally appointed Person responsible for handling the business affairs of a Settlement Class Member.

28. "Person" means any individual, corporation, partnership, association, affiliate, joint stock company, estate, trust, unincorporated association, entity, government and any political subdivision thereof, or any other type of business or legal entity.

29. "Preliminary Approval Order" means the order that the Class Representatives and Facebook will seek from the Court, without material variation from Exhibit B. Entry of the Preliminary Approval Order shall constitute preliminary approval of the Settlement Agreement.

30. “Service Award” means the amount approved by the Court to be paid to the Class Representatives as described further in Paragraph 60.

31. “Settlement” means the settlement of the Action between and among the Class Representatives, the Settlement Class Members, and Facebook, as set forth in this Settlement Agreement, including all attached Exhibits (which are an integral part of this Settlement Agreement and are incorporated in their entirety by reference).

32. “Settlement Class” has the meaning set forth in Paragraph 36.

33. “Settlement Class Member(s)” means any and all persons who fall within the definition of the Settlement Class.

### **III. SETTLEMENT CLASS CERTIFICATION**

34. For purposes of settlement only, the Parties agree to seek provisional certification of the Settlement Class, pursuant to Federal Rule of Civil Procedure 23(b)(2). The only changes between the Settlement Class and the class certified by the Court on May 18, 2016, are (1) the explicit inclusion of Facebook users located in United States territories, and (2) bringing the end of the class period current to the date the Parties have executed this Agreement below.

35. The Parties further agree that the Court should make preliminary findings and enter the Preliminary Approval Order granting provisional certification of the Settlement Class subject to the final findings and approval in the Final Approval Order and Final Judgment, and appointing Class Representatives as the representatives of the Settlement Class and Class Counsel as counsel for the Settlement Class.

36. For purposes of the provisional certification, the Settlement Class shall be defined as follows:

All natural-person Facebook users located within the United States and its territories who have sent, or received from a Facebook user, private messages that included URLs in their content (and from which Facebook generated a URL attachment), from December 30, 2011 to March 1, 2017.

37. Excluded from the Settlement Class are (i) all Persons who are directors, officers, and agents of Facebook or its subsidiaries and affiliated companies or are designated by Facebook as employees of Facebook or its subsidiaries and affiliated companies; and (ii) the Court, the Court’s

1 immediate family, and Court staff, as well as any appellate court to which this matter is ever  
2 assigned, and its immediate family and staff.

3 38. Facebook does not consent to certification of the Settlement Class (or to the propriety  
4 of class treatment) for any purpose other than to effectuate the settlement of this Action. Facebook's  
5 agreement to provisional certification does not constitute an admission of wrongdoing, fault, liability,  
6 or damage of any kind to Class Representatives or any of the provisional Settlement Class Members.

7 39. If this Settlement Agreement is terminated pursuant to its terms, disapproved by any  
8 court (including any appellate court), and/or not consummated for any reason, or the Effective Date  
9 for any reason does not occur, the order certifying the Settlement Class for purposes of effectuating  
10 the Settlement, and all preliminary and/or final findings regarding that class certification order, shall  
11 be automatically vacated upon notice of the same to the Court, the Action shall proceed as though the  
12 Settlement Class had never been certified pursuant to this Settlement Agreement and such findings  
13 had never been made, and the Action shall return to the procedural posture on December 12, 2016, in  
14 accordance with this Paragraph. No Party nor counsel shall refer to or invoke the vacated findings  
15 and/or order relating to class settlement or Rule 23 of the Federal Rules of Civil Procedure if this  
16 Settlement Agreement is not consummated and the Action is later litigated and contested by  
17 Facebook under Rule 23 of the Federal Rules of Civil Procedure.

#### 18 **IV. SETTLEMENT CONSIDERATION AND INJUNCTIVE RELIEF**

19 40. In consideration for the dismissal of the Action with prejudice and the releases  
20 provided in this Settlement Agreement, Facebook agrees to the following:

21 a) Acknowledgment regarding Cessation of Practices. Facebook confirms that  
22 the following uses of data from EntShares created from URLs sent in Facebook Messages during the  
23 Class Period have ceased, as of the dates noted below:

24 i) From the beginning of the Class Period until on or about December 19,  
25 2012, Facebook source code was engineered so that when an anonymous, aggregate count was  
26 displayed next to a "Like" button on a third-party web page, that count often included, *inter alia*, the  
27 number of times a URL related to that particular website had been shared by Facebook users in  
28 Facebook Messages and resulted in creation of an EntShare. On or about December 19, 2012,



1 Facebook changed its source code such that the external count no longer included the number of  
2 shares, by users, of URLs in private messages that resulted in creation of EntShares.

3           ii) Facebook makes its “Insights” user interface and related API available  
4 to owners of third-party websites that choose to include Facebook tools or features, for purposes of  
5 providing anonymous, aggregate data about interaction with and traffic to their websites. During  
6 certain periods of time during the Class Period, this information included anonymous, aggregate  
7 statistics and demographic information about users who shared links to those sites across the  
8 Facebook platform. From the beginning of the Class Period until on or about October 11, 2012, the  
9 anonymous, aggregate statistics and demographic information included information about users who  
10 shared URLs in Facebook Messages that resulted in creation of EntShares. On or about October 11,  
11 2012, Facebook changed its source code such that it ceased including information about URL shares  
12 in Facebook Messages that resulted in creation of EntShares (and attendant statistics and  
13 demographic information) within Insights and its related API.

14           iii) Facebook’s Recommendations Feed was a social plugin offered to  
15 developers that displayed a list of URLs representing the most recommended webpages on that  
16 developer’s site. Over time, two different units of Facebook source code determined the list of URLs  
17 that would appear in the Recommendations Feed for a given webpage at a given time. One of those  
18 units of Facebook source code was the “PHP backend.” During the Class Period, the PHP backend  
19 was never the primary system determining the list of URLs that would appear in the  
20 Recommendations Feed. However, the PHP backend served as a backup system if the primary  
21 system failed. The PHP backend considered, *inter alia*, an anonymous, aggregate count of, *inter alia*,  
22 the number of times a URL had been shared in a Facebook Message and resulted in creation of an  
23 EntShare. On or about July 9, 2014, Facebook changed its code such that it ceased utilizing the PHP  
24 backend as the backup system for its Recommendations Feed.

25           b) EntShares Acknowledgment. Facebook confirms, as of the date it has  
26 executed this Agreement below, that it is not using any data from EntShares created from URL  
27 attachments sent by users in Facebook Messages for: 1) targeted advertising; 2) sharing personally  
28 identifying user information with third parties; 3) use in any public counters in the “link\_stats” and

Graph APIs; and 4) displaying lists of URLs representing the most recommended webpages on a particular web site.

c) Disclosure Changes. Facebook acknowledges that enhanced disclosures and practice changes, enacted after the filing of this Action, are among the benefits to the Class Members. Specifically, in January 2015, Facebook's Data Policy was revised to state, *inter alia*, that Facebook collects the "content and other information" that people provide when they "message or communicate with others," and to further explain the ways in which Facebook may use that content, and (2) in July 2014, the backup system for the Recommendations Feed, as described above, was discontinued.

d) Additional Explanatory Language. Facebook shall display the following, additional language, without material variation, on its United States website for Help Center materials concerning messages within 30 days of the Effective Date: "We use tools to identify and store links shared in messages, including a count of the number of times links are shared." Facebook shall make this additional language available on its United States website for a period of one year from the date it is posted, provided however that Facebook may update the disclosures to ensure accuracy with ongoing product changes.

## **V. SUBMISSION OF THE SETTLEMENT AGREEMENT TO THE COURT FOR REVIEW AND APPROVAL**

41. Solely for purposes of implementing this Agreement and effectuating the proposed Settlement, the Parties agree and stipulate that Class Counsel shall submit to the Court a motion for preliminary approval of the Settlement together with the [Proposed] Preliminary Approval Order (Exhibit B) and [Proposed] Final Approval Order and Final Judgment (Exhibit A).

42. Among other things, the Preliminary Approval Order shall:

- a) find that the requirements for provisional certification of the Settlement Class have been satisfied, appointing Class Representatives as the representatives of the provisional Settlement Class and Class Counsel as counsel for the provisional Settlement Class;
- b) find that the CAFA Notice sent by Facebook complied with 28 U.S.C. § 1715 and all other provisions of the Class Action Fairness Act of 2005;

1 c) preliminarily enjoin all Settlement Class Members and their Legally  
2 Authorized Representatives from filing or otherwise participating in any other suit based on the  
3 Released Claims;

4 d) establish dates by which the Parties shall file and serve all papers in support of  
5 the application for final approval of the Settlement;

6 e) schedule the Fairness Hearing on a date ordered by the Court, provided in the  
7 Preliminary Approval Order, and in compliance with applicable law, to determine whether the  
8 Settlement should be approved as fair, reasonable, adequate, and to determine whether a Final  
9 Approval Order and Final Judgment should be entered dismissing the Action with prejudice;

10 f) provide that all Settlement Class Members will be bound by the Final  
11 Approval Order and Final Judgment dismissing the Action with prejudice; and

12 g) pending the Fairness Hearing, stay all proceedings in the Action, other than the  
13 proceedings necessary to carry out or enforce the terms and conditions of this Settlement Agreement  
14 and Preliminary Approval Order.

15 43. In advance of the Fairness Hearing, Class Counsel shall request entry of a Final  
16 Approval Order and Final Judgment, without material variation from Exhibit A, the entry of which is  
17 a material condition of this Settlement Agreement, and that shall, among other things:

18 a) find that the Court has personal jurisdiction over all Settlement Class  
19 Members, that the Court has subject matter jurisdiction over the claims asserted in the Action, and  
20 that the venue is proper;

21 b) finally approve this Settlement Agreement and the Settlement pursuant to Rule  
22 23 of the Federal Rules of Civil Procedure;

23 c) certify the Settlement Class under Federal Rule of Civil Procedure 23(b)(2) for  
24 purposes of settlement only;

25 d) find that notice to the Rule 23(b)(2) class is not necessary;

26 e) incorporate the Releases set forth in this Settlement Agreement and make the  
27 Releases effective as of the Effective Date;

28 f) issue the injunctive relief described in this Settlement Agreement;

g) authorize the Parties to implement the terms of the Settlement;

h) dismiss the Action with prejudice and enter a separate judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure; and

i) determine that the Agreement and the Settlement provided for herein, and any proceedings taken pursuant thereto, are not, and should not in any event be offered, received, or construed as evidence of, a presumption, concession, or an admission by any Party of liability or non-liability or of the certifiability or non-certifiability of a litigation class, or of any misrepresentation or omission in any statement or written document approved or made by any Party; provided, however, that reference may be made to this Agreement and the Settlement provided for herein in such proceedings as may be necessary to effectuate the provisions of this Agreement, as further set forth in this Agreement.

## **VI. RELEASES AND DISMISSAL OF ACTION**

44. “Releases” mean the releases and waivers set forth in this Settlement Agreement and in the Final Approval Order and Final Judgment. The Releases are a material part of the Settlement for Facebook. The Releases shall be construed as broadly as possible to effect complete finality over this Action involving claims that result from, arise out of, are based on, or relate in any way to the practices and claims that were alleged in, or could have been alleged in, the Action.

45. “Released Parties” means (i) Facebook and its past, present, and future parents, subsidiaries, affiliates, divisions, joint ventures, licensees, franchisees, and any other legal entities, whether foreign or domestic, that are owned or controlled by Facebook; and (ii) the past, present, and future shareholders, officers, directors, members, agents, employees, independent contractors, consultants, administrators, representatives, fiduciaries, insurers, attorneys, legal representatives, advisors, predecessors, successors, and assigns of the entities in Part (i) of this Paragraph.

46. “Class Representatives’ Releasing Parties” means each Class Representative, and each of his heirs, estates, trustees, principals, beneficiaries, guardians, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors-in-interest, and assigns and/or anyone other than Class Members claiming through them or acting or purporting to act for them or on their behalf.

47. Upon the Effective Date, Class Representatives' Releasing Parties will be deemed to have, and by operation of the Final Approval Order and Final Judgment will have fully, finally, and forever released, relinquished, and discharged any and all past, present, and future claims, actions, demands, causes of action, suits, debts, obligations, damages, rights or liabilities, of any nature and description whatsoever, known or unknown, recognized now or hereafter, existing or preexisting, expected or unexpected, pursuant to any theory of recovery (including, but not limited to, those based in contract or tort, common law or equity, federal, state, or local law, statute, ordinance, or regulation), against the Released Parties, from the Class Representatives' first interaction with Facebook up until and including the Effective Date, for any type of relief that can be released as a matter of law, including, without limitation, claims for monetary relief, damages (whether compensatory, consequential, punitive, exemplary, liquidated, and/or statutory), costs, penalties, interest, attorneys' fees, litigation costs, restitution, or equitable relief ("Class Representatives' Released Claims"). Class Representatives' Releasing Parties are forever enjoined from taking any action seeking any relief against the Released Parties based on any of Class Representatives' Released Claims.

48. "Releasing Parties" means Settlement Class Members, and each of their heirs, estates, trustees, principals, beneficiaries, guardians, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors-in-interest, and assigns and/or anyone claiming through them or acting or purporting to act for them or on their behalf.

49. Upon the Effective Date, the Releasing Parties will be deemed to have, and by operation of the Final Approval Order and Final Judgment will have fully, finally, and forever released, relinquished, and discharged any and all past, present, and future claims, actions, demands, causes of action, suits, debts, obligations, and rights or liabilities for injunctive and/or declaratory relief, of any nature and description whatsoever, known or unknown, existing or preexisting, recognized now or hereafter, expected or unexpected, pursuant to any theory of recovery (including, but not limited to, those based in contract or tort, common law or equity, federal, state, or local law, statute, ordinance, or regulation) against the Released Parties, from the beginning of the Class Period up until and including the Effective Date, that result from, arise out of, are based on, or relate in any

1 way to the practices and claims that were alleged in, or could have been alleged in, the Action  
2 (“Settlement Class Members’ Released Claims”), except that, notwithstanding the foregoing, the  
3 Releasing Parties do not release claims for monetary relief, damages, or statutory damages. The  
4 Releasing Parties are forever enjoined from taking any action seeking injunctive and/or declaratory  
5 relief against the Released Parties based on any Settlement Class Members’ Released Claims.

6 50. “Released Claims” include Class Representatives’ Released Claims and Settlement  
7 Class Members’ Released Claims.

8 51. Upon the Effective Date, Facebook will be deemed to have, and by operation of the  
9 Final Approval Order and Final Judgment will have fully, finally, and forever released, relinquished,  
10 and discharged any and all past, present, and future claims, actions, demands, causes of action, suits,  
11 debts, obligations, and rights or liabilities for injunctive and/or declaratory relief, of any nature and  
12 description whatsoever, known or unknown, existing or preexisting, recognized now or hereafter,  
13 expected or unexpected, pursuant to any theory of recovery (including, but not limited to, those based  
14 in contract or tort, common law or equity, federal, state, or local law, statute, ordinance, or  
15 regulation) against the Class Representatives’ Releasing Parties, from the beginning of the Class  
16 Period up until and including the Effective Date, that result from, arise out of, are based on, or relate  
17 in any way to the practices and claims that were alleged in, or could have been alleged in, the Action  
18 (“Facebook’s Released Claims”). Facebook is forever enjoined from taking any action seeking any  
19 relief against the Class Representatives’ Releasing Parties based on any of Facebook’s Released  
20 Claims.

21 52. After entering into this Settlement Agreement, the Parties may discover facts other  
22 than, different from, or in addition to, those that they know or believe to be true with respect to the  
23 claims released by this Settlement Agreement, but they intend to release fully, finally and forever the  
24 Released Claims, and in furtherance of such intention, the Releases will remain in effect  
25 notwithstanding the discovery or existence of any such additional or different facts. With respect to  
26 the Released Claims, Class Representatives (on behalf of themselves and the Settlement Class  
27 Members), through their counsel, expressly, knowingly, and voluntarily waive any and all provisions,  
28 rights, and benefits conferred by California Civil Code Section 1542 and any statute, rule, and legal

1 doctrine similar, comparable, or equivalent to California Civil Code Section 1542, which reads as  
2 follows:

3 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
4 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER  
5 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN  
6 BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER  
7 SETTLEMENT WITH THE DEBTOR.

8 53. Notwithstanding the preceding Paragraph, Settlement Class Members are not releasing  
9 any known or unknown claims for damages. The Parties acknowledge, and by operation of law shall  
10 be deemed to have acknowledged, that the waiver of the provisions of Section 1542 of the California  
11 Civil Code (and any similar State laws) with respect to the claims released by this Settlement  
12 Agreement was separately bargained for and was a key element of the Settlement.

13 54. By operation of the Final Approval Order and Final Judgment, the Action will be  
14 dismissed with prejudice.

15 55. Upon the Effective Date: (a) this Settlement Agreement shall be the exclusive remedy  
16 for any and all Released Claims of Class Representatives and Settlement Class Members; and (b)  
17 Class Representatives and Settlement Class Members stipulate to be and shall be permanently barred  
18 and enjoined by Court order from initiating, asserting, or prosecuting against Released Parties in any  
19 federal or state court or tribunal any and all Released Claims.

## 20 **VII. NOTICE PURSUANT TO 28 U.S.C. § 1715**

21 56. Facebook shall serve notice of the Settlement Agreement that meets the requirements  
22 of 28 U.S.C. § 1715, on the appropriate federal and state officials no later than ten (10) days  
23 following the filing of this Settlement Agreement with the Court. The Parties agree that class notice  
24 is not necessary in this action. *See, e.g., Lilly v. Jamba Juice Co.*, No. 13-cv-02998-JST, 2015 WL  
25 1248027, at \*9 (N.D. Cal. Mar. 18, 2015); *Kim v. Space Pencil, Inc.*, No. 11-cv-03796-LB, 2012 WL  
26 5948951, at \*4 (N.D. Cal. Nov. 28, 2012).

## 27 **VIII. ATTORNEYS' FEES AND COSTS**

28 57. Class Counsel may apply to the Court for an award of reasonable attorneys' fees and  
costs not to exceed \$3,890,000. Class Counsel approximates that it will seek \$660,000 in costs and



1 \$3,230,000 in fees, but may apply in different amounts not to exceed \$3,890,000. Facebook has been  
2 provided a copy of summaries of Class Counsel's time records, and as a result of that review,  
3 Facebook will take no position on Class Counsel's application and agrees to pay the amount of fees  
4 and costs determined by the Court. These terms regarding fees and costs were negotiated and agreed  
5 to by the Parties only after full agreement was reached as to all other material terms.

6 58. Any Attorneys' Fees and Costs Award, as awarded by the Court, shall be payable by  
7 Facebook, as ordered, within the later of (a) thirty (30) calendar days after the Effective Date, or (b)  
8 ten (10) business days after Class Counsel, following the Effective Date, has transmitted to Facebook  
9 instructions for payment.

10 59. Class Counsel shall have the sole and absolute discretion to allocate the Attorneys'  
11 Fees and Costs Award amongst Class Counsel and any other attorneys. Facebook shall have no  
12 liability or other responsibility for allocation of any such Attorneys' Fees and Costs awarded. The  
13 amount ordered by the Court shall be the sole monetary obligation paid by Facebook pursuant to this  
14 Settlement Agreement, and in no event shall Facebook be obligated to pay any amount in excess of  
15 \$3,890,000.

16 60. The Parties agree that the Class Representatives may apply to the Court for a Service  
17 Award to each of the Class Representatives, each of which shall not exceed \$5,000, for their services  
18 as class representatives. The Parties agree that the decision whether or not to award any such  
19 payment, and the amount of that payment, rests in the exclusive discretion of the Court. Facebook  
20 agrees to pay the amount determined by the Court. Class Representatives understand and  
21 acknowledge that they may receive no monetary payment, and their agreement to the Settlement is  
22 not conditioned on the possibility of receiving monetary payment. Any Service Awards, as awarded  
23 by the Court, shall be payable by Facebook as ordered, within the later of (a) thirty (30) calendar days  
24 after the Effective Date, or (b) ten (10) business days after Class Counsel, following the Effective  
25 Date, has transmitted to Facebook instructions for payment.



**IX. MODIFICATION OR TERMINATION OF SETTLEMENT AGREEMENT AND  
FACEBOOK'S RESERVATION OF RIGHTS**

61. This Settlement Agreement may be amended or modified only by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest and approval of the Court; provided, however that, after entry of the Final Approval Order and Final Judgment, the Parties may by written agreement effect such amendments, modifications, or expansions of this Settlement Agreement and its implementing documents (including all Exhibits hereto) without further approval by the Court if such changes are consistent with the Court's Final Approval Order and Final Judgment and do not materially alter, reduce, or limit the rights of Settlement Class Members under this Settlement Agreement.

62. This Settlement Agreement and any Exhibits attached hereto constitute the entire agreement among the Parties, and no representations, warranties, or inducements have been made to any Party concerning this Settlement Agreement or its Exhibits other than the representations, warranties, and covenants covered and memorialized in such documents.

63. In the event the terms or conditions of this Settlement Agreement are modified by any court, any Party in its sole discretion to be exercised within thirty (30) days after such modification may declare this Settlement Agreement null and void. For purposes of this Paragraph, modifications include any modifications to the definitions of the Settlement Class, Settlement Class Members, Released Parties, or Released Claims, any modifications to the terms of the Settlement consideration described in Paragraph 40 and/or any requirement of notice to the Settlement Class. In the event of any modification by any court, and in the event the Parties do not exercise their unilateral option to withdraw from this Settlement Agreement pursuant to this Paragraph, the Parties shall meet and confer within seven (7) days of such ruling to attempt to reach an agreement as to how best to effectuate the court-ordered modification.

64. In the event that a Party exercises his/her/its option to withdraw from and terminate this Settlement Agreement, then the Settlement proposed herein shall become null and void and shall have no force or effect, the Parties shall not be bound by this Settlement Agreement, and the Parties will be returned to their respective positions existing on December 12, 2016.

1           65.     If this Settlement Agreement is not approved by the Court or the Settlement  
2 Agreement is terminated or fails to become effective in accordance with the terms of this Settlement  
3 Agreement, the Parties will be restored to their respective positions in the Action on December 12,  
4 2016. In such event, the terms and provisions of this Settlement Agreement and the memorandum of  
5 understanding will have no further force and effect with respect to the Parties and will not be used in  
6 this Action or in any other proceeding for any purpose, and any Judgment or order entered by the  
7 Court in accordance with the terms of this Settlement Agreement will be treated as vacated.

8           66.     The procedure for and the allowance or disallowance by the Court of any application  
9 for attorneys' fees, costs, expenses, and/or reimbursement to be paid to Class Counsel, and the  
10 procedure for any payment to Class Representatives, are not part of the settlement of the Released  
11 Claims as set forth in this Settlement Agreement, and are to be considered by the Court separately  
12 from the Court's consideration of the fairness, reasonableness, and adequacy of the settlement of the  
13 Released Claims as set forth in this Settlement Agreement. Any such separate order, finding, ruling,  
14 holding, or proceeding relating to any such applications for Attorneys' Fees and Costs and/or  
15 payment to Class Representatives, or any separate appeal from any separate order, finding, ruling,  
16 holding, or proceeding relating to them or reversal or modification of them, shall not operate to  
17 terminate or cancel this Settlement Agreement or otherwise affect or delay the finality of the Final  
18 Approval Order and Final Judgment approving the Settlement. The terms of this Agreement relating  
19 to the Attorneys' Fees and Costs Award and Service Awards were negotiated and agreed to by the  
20 Parties only after full agreement was reached as to all other material terms of the proposed  
21 Settlement, including, but not limited to, any terms relating to the relief to the Settlement Class.

22           67.     Facebook denies the material factual allegations and legal claims asserted in the  
23 Action, including any and all charges of wrongdoing or liability arising out of any of the conduct,  
24 statements, acts or omissions alleged, or that could have been alleged, in the Action. Similarly, this  
25 Settlement Agreement provides for no admission of wrongdoing or liability by any of the Released  
26 Parties. This Settlement is entered into solely to eliminate the uncertainties, burdens, and expenses of  
27 protracted litigation. For the avoidance of doubt, Facebook does not acknowledge the propriety of  
28 certifying the Settlement Class for any purpose other than to effectuate the Settlement of the Action.

1 If this Settlement Agreement is terminated pursuant to its terms, or the Effective Date for any reason  
2 does not occur, Facebook reserves the right to challenge the certifiability of any class claims certified  
3 in the Action and/or to seek to decertify any such class claims. Facebook's agreement to this  
4 Settlement does not constitute an admission that certification is appropriate outside of the context of  
5 this Settlement. Class Counsel shall not refer to or invoke Facebook's decision to accept the certified  
6 class for purposes of settlement if the Effective Date does not occur and the Action is later litigated  
7 and certification is contested by Facebook under Rule 23 of the Federal Rules of Civil Procedure.

8 **X. MISCELLANEOUS PROVISIONS**

9 68. The Parties intend the Settlement Agreement to be a final and complete resolution of  
10 all disputes between them with respect to the Action. The Settlement Agreement compromises  
11 claims that are contested and will not be deemed an admission by Facebook or Class Representatives  
12 as to the merits of any claim or defense.

13 69. Unless otherwise specifically provided herein, all notices, demands, or other  
14 communications given hereunder shall be in writing and shall be deemed to have been duly given as  
15 of the third business day after mailing by United States registered or certified mail, return receipt  
16 requested, addressed as follows:

17 To Class Representatives and the Settlement Class:

18 Michael W. Sobol  
19 Lieff Cabraser Heimann & Bernstein, LLP  
20 275 Battery Street, 29th Floor  
San Francisco, CA 94111-3339

21 To Counsel for Facebook:

22 Christopher Chorba  
23 Gibson, Dunn & Crutcher LLP  
24 333 South Grand Avenue  
25 Los Angeles, CA 90071  
26  
27  
28

With a Copy to Facebook:

Colin Stretch  
General Counsel  
Facebook, Inc.  
1601 Willow Road  
Menlo Park, CA 94025

70. All of the Exhibits to this Agreement are an integral part of the Settlement and are incorporated by reference as though fully set forth herein.

71. The Parties agree that the recitals are contractual in nature and form a material part of this Settlement Agreement.

72. No extrinsic evidence or parol evidence shall be used to interpret, explain, construe, contradict, or clarify this Agreement, its terms, the intent of the Parties or their counsel, or the circumstances under which this Settlement Agreement was made or executed. This Settlement Agreement supersedes all prior negotiations and agreements. The Parties expressly agree that the terms and conditions of this Settlement Agreement will control over any other written or oral agreements.

73. Unless otherwise noted, all references to “days” in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.

74. The Settlement Agreement, the Settlement, all documents, orders, and other evidence relating to the Settlement, the fact of their existence, any of their terms, any press release or other statement or report by the Parties or by others concerning the Settlement Agreement, the Settlement, their existence, or their terms, any negotiations, proceedings, acts performed, or documents drafted or executed pursuant to or in furtherance of the Settlement Agreement or the Settlement shall not be offered, received, deemed to be, used as, construed as, and do not constitute a presumption, concession, admission, or evidence of (i) the validity of any Released Claims or of any liability, culpability, negligence, or wrongdoing on the part of the Released Parties; (ii) any fact alleged, defense asserted, or any fault, misrepresentation, or omission by the Released Parties; (iii) the propriety of certifying a litigation class or any decision by any court regarding the certification of a class, and/or (iv) whether the consideration to be given in this Settlement Agreement represents the

1 relief that could or would have been obtained through trial in the Action, in any trial, civil, criminal,  
2 administrative, or other proceeding of the Action or any other action or proceeding in any court,  
3 administrative agency, or other tribunal.

4 75. The Parties to this Action or any other Released Parties shall have the right to file the  
5 Settlement Agreement and/or the Final Approval Order and Final Judgment in any action that may be  
6 brought against them in order to support a defense or counterclaim based on principles of res judicata,  
7 collateral estoppel, release, good-faith settlement, judgment bar, reduction, or any other theory of  
8 claim preclusion or issue preclusion or similar defense or counterclaim.

9 76. The Parties agree that the consideration provided to the Settlement Class and the other  
10 terms of the Settlement Agreement were negotiated at arm's length, in good faith by the Parties, and  
11 reflect a settlement that was reached voluntarily, after consultation with competent legal counsel, and  
12 with the assistance of an independent, neutral mediator.

13 77. The Class Representatives and Class Counsel have concluded that the Settlement set  
14 forth herein constitutes a fair, reasonable, and adequate resolution of the claims that the Class  
15 Representatives asserted against Facebook, including the claims on behalf of the Settlement Class,  
16 and that it promotes the best interests of the Settlement Class.

17 78. To the extent permitted by law, all agreements made and orders entered during the  
18 course of the Action relating to the confidentiality of information shall survive this Settlement  
19 Agreement.

20 79. The waiver by one Party of any breach of this Settlement Agreement by any other  
21 Party shall not be deemed a waiver of any other prior or subsequent breach of this Settlement  
22 Agreement.

23 80. This Settlement Agreement may be executed in counterparts, each of which shall be  
24 deemed an original and all of which, when taken together, shall constitute one and the same  
25 instrument. Signatures submitted by email or facsimile shall also be considered originals. The date  
26 of execution shall be the latest date on which any Party signs this Settlement Agreement.

1           81.     The Parties hereto and their respective counsel agree that they will use their best  
2     efforts to obtain all necessary approvals of the Court required by this Settlement Agreement,  
3     including to obtain a Final Approval Order and Final Judgment approving the Settlement.

4           82.     This Settlement Agreement shall be binding upon and shall inure to the benefit of the  
5     successors and assigns of the Parties hereto, including any and all Released Parties and any  
6     corporation, partnership, or other entity into or with which any Party hereto may merge, consolidate,  
7     or reorganize, each of which is entitled to enforce this Settlement Agreement.

8           83.     This Settlement Agreement was jointly drafted by the Parties. Class Representatives,  
9     Settlement Class Members, and/or Facebook shall not be deemed to be the drafters of this Settlement  
10    Agreement or of any particular provision, nor shall they argue that any particular provision should be  
11    construed against its drafter or otherwise resort to the *contra proferentem* canon of construction.  
12    Accordingly, this Settlement Agreement should not be construed in favor of or against one Party as to  
13    the drafter, and the Parties agree that the provisions of California Civil Code § 1654 and common law  
14    principles of construing ambiguities against the drafter shall have no application.

15          84.     Any and all Exhibits to this Settlement Agreement, which are identified in the  
16    Settlement Agreement and attached hereto, are material and integral parts hereof and are fully  
17    incorporated herein by this reference.

18          85.     This Settlement Agreement shall be governed by and construed in accordance with the  
19    laws of the State of California, without regard to choice of law principles.

20          86.     The headings used in this Settlement Agreement are inserted merely for the  
21    convenience of the reader, and shall not affect the meaning or interpretation of this Settlement  
22    Agreement.

23          87.     In construing this Settlement Agreement, the use of the singular includes the plural  
24    (and vice-versa) and the use of the masculine includes the feminine (and vice-versa).

25          88.     Except in connection with any legal proceeding or court filing, Class Representatives  
26    and Class Counsel will not issue any press release or communicate with the media regarding the  
27    Settlement or the Action without prior approval of Facebook. However, if Class Representatives or  
28    Class Counsel receive an inquiry from any third party (excluding Settlement Class Members who

1 identify themselves as such), they may decline to comment, refer to the complaint, make accurate  
2 statements regarding the status of the settlement approval process, or defer to the Court file. Class  
3 Counsel reserves all rights to communicate with individual members of the Settlement Class to assist  
4 them in understanding the Settlement and nothing herein shall be construed as restricting those rights  
5 and responsibilities. Similarly, nothing in this Agreement will affect Facebook's right to  
6 communicate with individual members of the Settlement Class relating to matters other than the  
7 Action or the proposed Settlement.

8 89. The provision of the confidentiality agreement entered into with respect to the  
9 mediation process concerning this matter is waived for the limited purpose of permitting the Parties  
10 to confirm that they participated in the mediation and that the mediation process was successful.

11 90. The Class Representatives further acknowledge, agree, and understand that: (i) each  
12 has read and understands the terms of this Agreement; (ii) each has been advised in writing to consult  
13 with an attorney before executing this Agreement; and (iii) each has obtained and considered such  
14 legal counsel as he deems necessary.

15 91. All of the Parties warrant and represent that they are agreeing to the terms of this  
16 Settlement Agreement based upon the legal advice of their respective attorneys, that they have been  
17 afforded the opportunity to discuss the contents of this Settlement Agreement with their attorneys,  
18 and that the terms and conditions of this document are fully understood and voluntarily accepted.

19 92. Each Party to this Settlement Agreement warrants that he or it is acting upon his or its  
20 independent judgment and upon the advice of his or its counsel, and not in reliance upon any  
21 warranty or representation, express or implied, of any nature or any kind by any other Party, other  
22 than the warranties and representations expressly made in this Settlement Agreement.

23 93. Each Counsel or other person executing this Settlement Agreement or any of its  
24 Exhibits on behalf of any Party hereby warrants that such person has the full authority to do so. Class  
25 Counsel, on behalf of the Settlement Class, is expressly authorized by the Class Representatives to  
26 take all appropriate action required or permitted to be taken by the Settlement Class pursuant to this  
27 Settlement Agreement to effectuate its terms, and is expressly authorized to enter into any  
28

1 modifications or amendments to this Settlement Agreement on behalf of the Settlement Class that  
2 Class Counsel and Class Representatives deem appropriate.

3 IN WITNESS WHEREOF, the Parties hereto, intending to be legally bound hereby, have duly  
4 executed this Settlement Agreement as of the date set forth below.

5  
6 Dated: \_\_\_\_\_, 2017

PLAINTIFF MATTHEW CAMPBELL

7  
8 By: \_\_\_\_\_

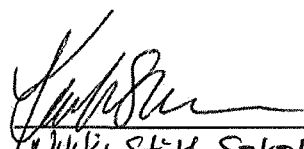
9  
10 Dated: \_\_\_\_\_, 2017

PLAINTIFF MICHAEL HURLEY

11  
12 By: \_\_\_\_\_

13  
14 Dated: Mar. 1, 2017

FACEBOOK, INC.

15  
16 By:   
*Nikki Stitt Sokol, Assoc. General Counsel*

17 Dated: \_\_\_\_\_, 2017

PLAINTIFFS' CO-LEAD COUNSEL

18  
19 By: \_\_\_\_\_  
Michael Sobol

20  
21 By: \_\_\_\_\_  
Hank Bates

22  
23  
24 Dated: March 1, 2017

COUNSEL TO FACEBOOK, INC.

25  
26 By:   
Joshua Jessen



1 modifications or amendments to this Settlement Agreement on behalf of the Settlement Class that  
2 Class Counsel and Class Representatives deem appropriate.

3 IN WITNESS WHEREOF, the Parties hereto, intending to be legally bound hereby, have duly  
4 executed this Settlement Agreement as of the date set forth below.

5  
6 Dated: 3/1, 2017

PLAINTIFF MATTHEW CAMPBELL

7  
8 By: 

9  
10 Dated: \_\_\_\_\_, 2017

PLAINTIFF MICHAEL HURLEY

11  
12 By: \_\_\_\_\_

13  
14 Dated: \_\_\_\_\_, 2017

FACEBOOK, INC.

15  
16 By: \_\_\_\_\_

17 Dated: 3/1, 2017

PLAINTIFFS' CO-LEAD COUNSEL

*MICHAEL SOBOL, SIGNED ON HIS BEHALF BY*

18  
19 By: DAVID T. RUDOLPH 

Michael Sobol

20  
21 By: 

Hank Bates

22  
23  
24 Dated: \_\_\_\_\_, 2017

COUNSEL TO FACEBOOK, INC.

25  
26 By: \_\_\_\_\_

Joshua Jessen

1 modifications or amendments to this Settlement Agreement on behalf of the Settlement Class that  
2 Class Counsel and Class Representatives deem appropriate.

3 IN WITNESS WHEREOF, the Parties hereto, intending to be legally bound hereby, have duly  
4 executed this Settlement Agreement as of the date set forth below.

5  
6 Dated: \_\_\_\_\_, 2017

PLAINTIFF MATTHEW CAMPBELL

7  
8 By: \_\_\_\_\_

9  
10 Dated: 3/1, 2017

PLAINTIFF MICHAEL HURLEY

11  
12 By: Michael Hurley

13  
14 Dated: \_\_\_\_\_, 2017

FACEBOOK, INC.

15  
16 By: \_\_\_\_\_

17 Dated: \_\_\_\_\_, 2017

PLAINTIFFS' CO-LEAD COUNSEL

18  
19 By: \_\_\_\_\_  
20 Michael Sobol

21  
22 By: \_\_\_\_\_  
23 Hank Bates

24 Dated: \_\_\_\_\_, 2017

COUNSEL TO FACEBOOK, INC.

25  
26 By: \_\_\_\_\_  
27 Joshua Jessen  
28

# EXHIBIT A

1  
2  
3  
4  
5  
6  
7  
8 **UNITED STATES DISTRICT COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA**  
10 **OAKLAND DIVISION**

11 MATTHEW CAMPBELL and MICHAEL  
12 HURLEY,

13 Plaintiffs,

14 v.

15 FACEBOOK, INC.,

16 Defendant.  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Case No. C 13-05996 PJH-SK

**CLASS ACTION**

**[PROPOSED] ORDER GRANTING FINAL  
APPROVAL TO CLASS ACTION  
SETTLEMENT**

1 The Court has considered the Class Action Settlement Agreement (“Settlement Agreement”),  
2 dated March 1, 2017, the Parties’ motion for an order finally approving the Settlement Agreement,  
3 the record in this Action, the arguments and recommendations made by counsel, and the requirements  
4 of the law. The Court finds and orders as follows:

5 **I. FINAL APPROVAL OF THE SETTLEMENT AGREEMENT**

6 1. The Settlement Agreement is approved under Rule 23 of the Federal Rules of Civil  
7 Procedure. The Court finds that the Settlement Agreement and the Settlement it incorporates appear  
8 fair, reasonable, and adequate, and its terms are within the range of reasonableness. The Settlement  
9 Agreement was entered into at arm’s-length by experienced counsel after extensive negotiations  
10 spanning months, including with the assistance of a third-party mediator. The Court finds that the  
11 Settlement Agreement is not the result of collusion.

12 **II. DEFINED TERMS**

13 2. For purposes of this Final Approval Order and Final Judgment (“Order”), the Court  
14 adopts all defined terms as set forth in the Settlement Agreement.

15 **III. NO ADMISSIONS AND NO EVIDENCE**

16 3. This Order, the Settlement Agreement, the Settlement provided for therein, and any  
17 proceedings taken pursuant thereto, are not, and should not in any event be offered, received, or  
18 construed as evidence of, a presumption, concession, or an admission by any Party or any of the  
19 Released Persons of wrongdoing, to establish a violation of any law or duty, an admission that any of  
20 the practices at issue violate any laws or require any disclosures, any liability or non-liability, the  
21 certifiability or non-certifiability of a litigation class in this case, or any misrepresentation or  
22 omission in any statement or written document approved or made by any Party.

23 **IV. JURISDICTION**

24 4. For purposes of the Settlement of the Action, the Court finds it has subject matter and  
25 personal jurisdiction over the Parties, including all Settlement Class Members, and venue is proper.  
26  
27  
28

**V. CLASS CERTIFICATION OF RULE 23(B)(2)**  
**CLASS FOR SETTLEMENT PURPOSES ONLY**

5. The Court finds and concludes that, for the purposes of approving this Settlement only, the proposed Rule 23(b)(2) Settlement Class, which expands the class certified by the Court on May 18, 2016, meets the requirements for certification under Rule 23 of the Federal Rules of Civil Procedure: (a) the Settlement Class is so numerous that joinder of all members is impracticable; (b) there are questions of law or fact common to the Settlement Class; (c) the claims or defenses of the Class Representatives are typical of the claims or defenses of the Settlement Class; (d) Class Representatives and Class Counsel will fairly and adequately protect the interests of the Settlement Class because Class Representatives have no interests antagonistic to the Settlement Class, and have retained counsel who are experienced and competent to prosecute this matter on behalf of the Settlement Class; and (e) the Defendant has acted on grounds that apply generally to the Settlement Class, so that final injunctive relief is appropriate respecting the Settlement Class as a whole.

6. The Settlement Agreement was reached after extensive investigation and motion practice in the Action, and was the result of protracted negotiations conducted by the Parties, over the course of several months, including with the assistance of a mediator. Class Representatives and Class Counsel maintain that the Action and the claims asserted therein are meritorious and that Class Representatives and the Class would have prevailed at trial. Defendant denies the material factual allegations and legal claims asserted by Class Representatives in this Action, maintains that a class would not be certifiable under any Rule, and that the Class Representatives and Class Members would not prevail at trial. Notwithstanding the foregoing, the Parties have agreed to settle the Action pursuant to the provisions of the Settlement Agreement, after considering, among other things: (a) the benefits to the Class Representatives and the Settlement Class under the terms of the Settlement Agreement; (b) the uncertainty of being able to prevail at trial; (c) the uncertainty relating to Defendant's defenses and the expense of additional motion practice in connection therewith; (d) obstacles to establishing entitlement to class-wide relief; (e) the attendant risks of litigation, especially in complex actions such as this, as well as the difficulties and delays inherent in such

litigation and appeals; and (f) the desirability of consummating the Settlement promptly in order to provide effective relief to the Class Representatives and the Settlement Class.

7. The Court accordingly certifies, for settlement purposes only, a class under Rule 23(b)(2), consisting of all natural-person Facebook users located within the United States and its territories who have sent, or received from a Facebook user, private messages that included URLs in their content (and from which Facebook generated a URL attachment), from December 30, 2011 to March 1, 2017. Excluded from the Settlement Class are (i) all Persons who are directors, officers, and agents of Facebook or its subsidiaries and affiliated companies or are designated by Facebook as employees of Facebook or its subsidiaries and affiliated companies; and (ii) the Court, the Court's immediate family, and Court staff, as well as any appellate court to which this matter is ever assigned, and its immediate family and staff.

## VI. NOTICE

8. Notice of the settlement is not required here. *See* Fed. R. Civ. P. 23(c)(2)(A) (stating that under Rule 23(b)(2) the court “*may* direct appropriate notice to the class”) (emphasis added). The Court finds that notice also is not required because the Settlement Agreement only releases claims for injunctive and/or declaratory relief and does not release the monetary or damages claims of the Class (*see* Settlement Agreement, ¶ 49), and thus the settlement expressly preserves the individual rights of class members to pursue monetary claims against the defendant. *See, e.g., Lilly v. Jamba Juice Co.*, No. 13-cv-02998-JST, 2015 WL 1248027, at \*8–9 (N.D. Cal. Mar. 18, 2015); *Kim v. Space Pencil, Inc.*, No. 11-cv-03796-LB, 2012 WL 5948951, at \*4, 17 (N.D. Cal. Nov. 28, 2012).

## VII. CLAIMS COVERED AND RELEASES

9. This Order constitutes a full, final and binding resolution between the Class Representatives' Releasing Parties, on behalf of themselves and the Settlement Class Members, and the Released Parties. This Release shall be applied to the maximum extent permitted by law.

10. Upon the Effective Date and by operation of this Order, the Class Representatives' Releasing Parties will fully, finally, and forever release any and all Class Representatives' Released Claims, including claims for personal injury and damages, known and unknown, as well as provide a waiver under California Civil Code Section 1542. Class Representatives' Releasing Parties are

1 forever enjoined from taking any action seeking any relief against the Released Parties based on any  
2 Class Representatives' Released Claims.

3 11. Upon the Effective Date and by operation of this Order, the Releasing Parties will  
4 fully, finally, and forever release the Settlement Class Members' Released Claims (as well as provide  
5 a waiver under California Civil Code Section 1542), including any and all claims for injunctive  
6 and/or declaratory relief of any kind or character, at law or equity, known or unknown, preliminary or  
7 final, under Federal Rule of Civil Procedure 23(b)(2) or any other federal or state law or rule of  
8 procedure, from the beginning of the Class Period up until and including the Effective Date, that  
9 result from, arise out of, are based on, or relate in any way to the practices and claims that were  
10 alleged in, or could have been alleged in, the Action, except that, notwithstanding the foregoing, the  
11 Releasing Parties do not release claims for monetary relief or damages. The Releasing Parties are  
12 forever enjoined from taking any action seeking injunctive and/or declaratory relief against the  
13 Released Parties based on any Settlement Class Members' Released Claims.

14 12. Upon the Effective Date and by operation of this Order, Facebook will fully, finally,  
15 and forever release, waive, and discharge all legal claims, causes of action, cross-claims, or counter-  
16 claims against Class Representatives' Releasing Parties that result from, arise out of, are based on, or  
17 relate in any way to the practices and claims that were alleged in, or could have been alleged in, the  
18 Action. Facebook is forever enjoined from taking any action seeking any relief against the Class  
19 Representatives' Releasing Parties based on any of Facebook's Released Claims.

20 13. The Settlement Agreement and this Order shall be the exclusive remedy for any and  
21 all Released Claims of the Class Representatives, Settlement Class Members, and Facebook.

## 22 **VIII. INJUNCTIVE RELIEF**

23 14. Facebook shall display the following language, without material variation, on its  
24 United States website for Help Center materials concerning messages within 30 days of the Effective  
25 Date: "We use tools to identify and store links shared in messages, including a count of the number of  
26 times links are shared." Facebook shall make this language available on its United States website for  
27 a period of one year from the date it is posted, provided however that Facebook may update the  
28 disclosures to ensure accuracy with ongoing product changes.



**IX. ATTORNEYS' FEES AND EXPENSES AND INCENTIVE AWARDS**

15. The Court's decision regarding the payment of attorneys' fees and expenses to Class Counsel and incentive awards to the Class Representatives is addressed in a separate order.

**X. AUTHORIZATION TO PARTIES TO IMPLEMENT  
AGREEMENT AND MODIFICATIONS OF AGREEMENT**

16. By this Order, the Parties are hereby authorized to implement the terms of the Settlement Agreement. After the date of entry of this Order, the Parties may by written agreement effect such amendments, modifications, or expansions of the Settlement Agreement and its implementing documents (including all exhibits thereto) without further approval by the Court if such changes are consistent with terms of this Order and do not materially alter, reduce, or limit the rights of Settlement Class Members under the Settlement Agreement.

**XI. RETENTION OF JURISDICTION**

17. The Court shall retain jurisdiction over any claim relating to the Settlement Agreement (including all claims for enforcement of the Settlement Agreement and/or all claims arising out of a breach of the Settlement Agreement) as well as any future claims by any Settlement Class Member relating in any way to the Released Claims.

**XII. FINAL JUDGMENT AND DISMISSAL WITH PREJUDICE**

18. By operation of this Order, this Action is hereby dismissed with prejudice. A separate judgment shall be entered pursuant to Rule 58 of the Federal Rules of Civil Procedure.

IT IS SO ORDERED.

DATED: \_\_\_\_\_

\_\_\_\_\_  
HONORABLE PHYLLIS J. HAMILTON  
UNITED STATES DISTRICT JUDGE

# **EXHIBIT B**

1  
2  
3  
4  
5  
6  
7  
8 **UNITED STATES DISTRICT COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA**  
10 **OAKLAND DIVISION**

11 MATTHEW CAMPBELL and MICHAEL  
12 HURLEY,

13 Plaintiffs,

14 v.

15 FACEBOOK, INC.,

16 Defendant.  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Case No. C 13-05996 PJH-SK

**CLASS ACTION**

**[PROPOSED] ORDER GRANTING  
PRELIMINARY APPROVAL OF CLASS  
ACTION SETTLEMENT**

1 WHEREAS, the above-entitled action is pending before this Court (the “Action”);

2 WHEREAS, the Plaintiffs having moved, pursuant to Federal Rule of Civil Procedure 23(e),  
3 for an order approving the Settlement of this Action, in accordance with the Class Action Settlement  
4 Agreement (“Settlement Agreement”) attached as Exhibit 1 to the Declaration of Class Counsel in  
5 Support of Plaintiffs’ Motion for Preliminary Approval of Class Settlement filed on March 1, 2017,  
6 which sets forth the terms and conditions for a proposed settlement of the Action and for dismissal of  
7 the Action with prejudice upon the terms and conditions set forth therein; and the Court having read  
8 and considered the Settlement Agreement and having heard any argument of counsel; and

9 WHEREAS, all defined terms herein have the same meanings as set forth in the Settlement  
10 Agreement.

11 NOW, THEREFORE, IT IS HEREBY FOUND AND ORDERED:

12 1. This Court has jurisdiction over the subject matter of the Action and over all Parties to  
13 the Action, including all Settlement Class Members.

14 2. The Court does hereby preliminarily approve the Settlement Agreement and the  
15 Settlement set forth therein, subject to further consideration at the Fairness Hearing described below.

16 3. The Court finds on a preliminary basis that the Settlement as set forth in the  
17 Settlement Agreement falls within the range of reasonableness and therefore meets the requirements  
18 for preliminary approval.

19 4. The Court conditionally certifies, for settlement purposes only (and for no other  
20 purpose and with no other effect upon the Action, including no effect upon the Action should the  
21 Settlement Agreement not receive final approval or should the Effective Date not occur), a class  
22 defined as all natural-person Facebook users located within the United States and its territories who  
23 have sent, or received from a Facebook user, private messages that included URLs in their content  
24 (and from which Facebook generated a URL attachment), from December 30, 2011 to March 1, 2017.  
25 The only changes between the Settlement Class and the class certified by the Court on May 18, 2016,  
26 are (1) the explicit inclusion of Facebook users located in United States territories, and (2) bringing  
27 the end of the class period current to the date of settlement. Excluded from the Settlement Class are  
28 (i) all Persons who are directors, officers, and agents of Facebook or its subsidiaries and affiliated

1 companies or are designated by Facebook as employees of Facebook or its subsidiaries and affiliated  
2 companies; and (ii) the Court, the Court's immediate family, and Court staff, as well as any appellate  
3 court to which this matter is ever assigned, and its immediate family and staff.

4 5. The Court finds, for settlement purposes only, that the expansion of the certified class  
5 to include all Settlement Class Members is appropriate under Federal Rule of Civil Procedure  
6 23(b)(2) in the settlement context because (1): the Defendant is alleged to have acted or refused to act  
7 on grounds that apply generally to the Settlement Class, so that the described injunctive and non-  
8 monetary relief is appropriate with respect to the Settlement Class as a whole; and (2): (a) the  
9 Settlement Class Members are so numerous that joinder of all Class Members in the class action is  
10 impracticable; (b) there are questions of law and fact common to the Settlement Class; (c) the claims  
11 of the Class Representatives are typical of the claims of the Class; (d) the Class Representatives and  
12 their counsel will fairly and adequately represent and protect the interests of the Class Members; and  
13 (e) a class action is superior to other available methods for the fair and efficient adjudication of the  
14 controversy.

15 6. The Court finds that, subject to the Fairness Hearing, the Settlement Agreement is fair,  
16 reasonable, adequate, and in the best interests of the Settlement Class. The Court further finds that  
17 the Settlement Agreement substantially fulfills the purposes and objectives of the class action and  
18 provides beneficial relief to the Settlement Class. The Court also finds that the Settlement  
19 Agreement: (a) is the result of serious, informed, non-collusive arms'-length negotiations, involving  
20 experienced counsel familiar with the legal and factual issues of this case and made with the  
21 assistance and supervision of a mediator; (b) meets all applicable requirements of law, including  
22 Federal Rule of Civil Procedure 23, and the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1715;  
23 and (c) is not a finding or admission of liability by Defendant.

24 7. Notice of the settlement is not required here. *See* Fed. R. Civ. P. 23(c)(2)(A) (stating  
25 that under Rule 23(b)(2) the court "*may* direct appropriate notice to the class") (emphasis added).  
26 The Court finds that notice also is not required because the Settlement Agreement only releases  
27 claims for injunctive and/or declaratory relief and does not release the monetary or damages claims of  
28 the Class (*see* Settlement Agreement, ¶ 49), and thus the settlement expressly preserves the individual

rights of class members to pursue monetary claims against the defendant. *See, e.g., Lilly v. Jamba Juice Co.*, No. 13-cv-02998-JST, 2015 WL 1248027, at \*8–9 (N.D. Cal. Mar. 18, 2015); *Kim v. Space Pencil, Inc.*, No. 11-cv-03796-LB, 2012 WL 5948951, at \*4, 17 (N.D. Cal. Nov. 28, 2012).

8. The Court finds that the CAFA Notice sent by Facebook complied with 28 U.S.C. § 1715 and all other provisions of the Class Action Fairness Act of 2005.

9. Each Settlement Class Member shall be given a full opportunity to comment on or object to the Settlement Agreement, and to participate at a Fairness Hearing. Comments or objections must be in writing, and must include (1) the name and case number of the Action (*Campbell et al. v. Facebook, Inc.*, Case No. 13-5996-PJH); (2) the Settlement Class Member's full legal name and mailing address; (3) the personal signature of the Settlement Class member; (4) the grounds for any objection; (5) the name and contact information of any and all attorneys representing, advising, or assisting with the comment or objection, or who may profit from pursuing any objection; and (6) a statement indicating whether the Settlement Class Member intends to appear at the Final Approval Hearing, either personally or through counsel.

10. To be considered, written comments or objections must be submitted to the Court either by mailing them to Class Action Clerk, United States District Court for the Northern District of California, 1301 Clay Street, Oakland, California 94612, or by filing them in person at any location of the United States District Court for the Northern District of California, within 60 days after the entry of this Order. No Class Member shall be entitled to be heard at the Final Approval Hearing, whether individually or through counsel, unless written notice of the Class Member's intention to appear at the Final Approval Hearing is timely filed, or postmarked for mail to the Court within 60 days after date of entry of this Order.

11. The date of the postmark on the envelope containing the written objection shall be the exclusive means used to determine whether an objection has been timely submitted. Class Members who fail to mail timely written objections in the manner specified above shall be deemed to have waived any objections and shall be forever barred from objecting to the Settlement Agreement and the proposed settlement by appearing at the Final Approval Hearing, appeal, collateral attack, or otherwise.

1           12.     The Court appoints Plaintiffs Michael Hurley and Matthew Campbell as the Class  
2     Representatives, and the law firms of Lieff Cabraser Heimann & Bernstein, LLP and Carney Bates &  
3     Pulliam, PLLC as Class Counsel.

4           13.     A hearing (the “Fairness Hearing”) shall be held before this Court on \_\_\_\_\_,  
5     2017, at \_\_\_\_\_.m., at the United States District Court for the Northern District of California, Oakland  
6     Courthouse, Courtroom 3 – 3rd Floor, 1301 Clay Street, Oakland, California 94612, to determine  
7     whether the proposed settlement of the Action on the terms and conditions provided for in the  
8     Settlement Agreement is fair, reasonable, and adequate to the Settlement Class and should be finally  
9     approved by the Court; whether a Final Approval Order and Final Judgment as provided in the  
10    Settlement Agreement should be entered; and to determine any amount of fees, costs, and expenses  
11    that should be awarded to Class Counsel and any award to the Class Representatives for their  
12    representation of, or service on behalf of, the Settlement Class. All Settlement Class Members will  
13    be bound by any Final Approval Order and Final Judgment dismissing the Action with prejudice.

14          14.     Class Counsel’s application for attorneys’ fees, costs and expenses shall be filed and  
15    served no later than thirty (30) days after the Court’s order of preliminary approval. Any opposition,  
16    comment, or objection shall be filed no later than sixty (60) days after the Court’s order of  
17    preliminary approval. Any reply shall be filed no later than seventy-four (74) days after the Court’s  
18    order of preliminary approval.

19          15.     The motion in support of final approval of the settlement shall be filed and served no  
20    later than thirty (30) days after the Court’s order of preliminary approval. Any opposition or  
21    objection shall be filed no later than sixty (60) days after the Court’s order of preliminary approval.  
22    Any reply shall be filed no later than seventy-four (74) days after the Court’s order of preliminary  
23    approval.

24          16.     At or after the Fairness Hearing, the Court shall determine whether any application for  
25    attorneys’ fees, costs and expenses, and any award to the Class Representatives for their  
26    representation of, and service to, the Class, should be approved.

27          17.     Neither this order, the fact that a settlement was reached and filed, the Settlement  
28    Agreement, nor any related negotiations, statements, or proceedings shall be construed as, offered as,

1 admitted as, received as, used as, or deemed to be an admission or concession of liability or  
2 wrongdoing whatsoever or breach of any duty on the part of Defendant. This order is not a finding of  
3 the validity or invalidity of any of the claims asserted or defenses raised in the Action. In no event  
4 shall this order, the fact that a settlement was reached, the Settlement Agreement, or any of its  
5 provisions or any negotiations, statements, or proceedings relating to it in any way be used, offered,  
6 admitted, or referred to in the Action except by the settling Parties and only the settling Parties in a  
7 proceeding to enforce the Settlement Agreement.

8 18. The Court reserves the right to adjourn the date of the Fairness Hearing and retains  
9 jurisdiction to consider all further applications arising out of or connected with the proposed  
10 Settlement. The Court may approve the Settlement, with such modifications as may be agreed to by  
11 the settling Parties, if appropriate, without further notice.

12 19. All discovery and proceedings in this Action are stayed until further order of this  
13 Court, except as may be necessary to implement the Settlement or comply with the terms of the  
14 Settlement Agreement. Settlement Class Members and their Legally Authorized Representatives are  
15 preliminarily enjoined from filing or otherwise participating in any other suit based on the Released  
16 Claims in the Settlement Agreement.

17 20. The Court retains jurisdiction over the Action to consider all further matters arising  
18 out of or connected with the Settlement Agreement and the Settlement described therein.

19  
20 IT IS SO ORDERED.

21  
22 DATED: \_\_\_\_\_

\_\_\_\_\_  
HONORABLE PHYLLIS J. HAMILTON  
UNITED STATES DISTRICT JUDGE