

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

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

Hank Bates (State Bar No. 167688)
hbates@cbplaw.com
Allen Carney
acarney@cbplaw.com
David Slade
dslade@cbplaw.com
CARNEY BATES & PULLIAM, PLLC
519 West 7th Street
Little Rock, AR 72201
Telephone: 501.312.8500
Facsimile: 501.312.8505

Attorneys for Plaintiffs and the Class

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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

Plaintiffs,

v.

FACEBOOK, INC.,

Defendant.

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

**PLAINTIFFS' NOTICE OF MOTION,
UNOPPOSED MOTION AND
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR AN AWARD OF
ATTORNEYS' FEES AND COSTS AND
SERVICE AWARDS**

Date: August 9, 2017

Time: 9:00 a.m.

Judge: Hon. Phyllis J. Hamilton

Place: Courtroom 3, 3rd Floor

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NOTICE OF MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on August 9, 2017, at 9:00 a.m., in the Courtroom of the Honorable Phyllis J. Hamilton (Courtroom 3), United States District Judge for the Northern District of California, Courtroom 3, 1301 Clay Street, Oakland, California, 94612, Plaintiffs Matthew Campbell and Michael Hurley (“Plaintiffs”) and Class Counsel¹ in the above-captioned matter will and hereby do move the Court for an award of attorneys’ fees and costs, and service awards pursuant to the Class Action Settlement Agreement (“Settlement”) entered between Plaintiffs and Defendant Facebook, Inc.

Plaintiffs’ motion is based on this Notice of Motion and Motion, the Memorandum of Points and Authorities below, the Declaration of Class Counsel filed herewith, the papers filed in support of Plaintiffs’ motion for preliminary settlement approval, the papers filed in support of Plaintiffs’ motion for final approval, the record in this case, and any additional argument and evidence the Court may consider.

Dated: May 26, 2017

By: /s/ Hank Bates

CARNEY BATES & PULLIAM, PLLC
Hank Bates (CA #167688)
hbates@cbplaw.com
Allen Carney
acarney@cbplaw.com
David Slade
dslade@cbplaw.com
519 West 7th St.
Little Rock, AR 72201
Telephone: (501) 312-8500
Facsimile: (501) 312-8505

¹ “Class Counsel” are the firms appointed as Class Counsel pursuant to the Court’s order preliminarily approving the proposed Settlement (the “Preliminary Approval Order”): Lieff Cabraser Heimann & Bernstein LLP and Carney Bates & Pulliam, PLLC. (*See* Dkt. 235 at 5.)

Michael W. Sobol (CA #194857)
msobol@lchb.com
David T. Rudolph
drudolph@lchb.com
Melissa Gardner
mgardner@lchb.com
LIEFF CABRASER HEIMANN &
BERNSTEIN, LLP
275 Battery Street, 29th Floor
San Francisco, CA 94111-339
Telephone: 415.956.1000
Facsimile: 415.956.1008

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

Class Counsel

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Matthew Campbell and Michael Hurley (“Plaintiffs” or “Class Representatives”) and Class Counsel, pursuant to the settlement (the “Settlement”) reached between Plaintiffs and Defendant Facebook, Inc. (“Facebook” or “Defendant”) respectfully request the Court approve this application for attorneys’ fees and costs and service awards.

Class Counsel seek an attorney’s fee award of \$3,236,304.69 and a cost award of \$653,695.31, which represents a significant negative multiplier. Pursuant to the Settlement Agreement, and after reviewing summaries of Class Counsel’s time records, Facebook has agreed to take no position on this request. The requested amount is fair, adequate and reasonable based upon the relief achieved in this action, the substantial effort required to obtain such relief, the complex legal issues and technical matters, and the contingent nature of the representation. The reasonableness of the requested fee is also evidenced by the fact that it represents a significant *negative* multiplier. The Ninth Circuit has ruled that there is a “‘strong presumption that the lodestar figure represents a reasonable fee’” and “‘although a court can adjust the lodestar upward or downward based on certain factors, adjustments are the exception rather than the rule.’” *Rodriguez v. West Publ. Corp.*, 602 Fed. Appx. 385, 387 (9th Cir. 2015) (quoting *Fischel v. Equitable Life Assur. Soc’y of U.S.*, 307 F.3d 997, 1007 (9th Cir. 2002)). However, to avoid protracted litigation on this issue, Class Counsel agreed to, and hereby seeks, an attorneys’ fee award of approximately *fifty percent* of the full lodestar of \$6,509,773. In similar contexts, courts within this District have found that a significant negative multiplier “strongly suggests” the reasonableness of a negotiated fee. Moreover, the technical complexity of the case is highlighted by the fact that over sixty percent of the expenses incurred by Class Counsel were for technical experts and consultants. The settlement was the product of intensive negotiations across several months and multiple in-person mediation sessions on a developed record at an advanced stage of litigation – at the close of factual discovery after this Court had certified a class for injunctive and declaratory relief. The settlement achieves the goals of the litigation as articulated in the operative Second Amended Complaint by addressing each of the challenged practices that the

1 Court certified for class treatment, while protecting the interests of any Settlement Class members
 2 that may not be remedied through injunctive relief by expressly excluding monetary relief from
 3 the class release.

4 Class Counsel further request awards of \$5,000 – the amount deemed “presumptively
 5 reasonable” in this District – to each of the two Class Representatives in recognition of the risk
 6 they undertook in bringing these claims and their significant involvement in this litigation over
 7 the past three years, including full-day depositions. Facebook takes no position on this request.

8 **II. SUMMARY OF CLASS COUNSEL’S WORK IN THIS LITIGATION**

9 As detailed in the Declaration of Class Counsel, Class Counsel expended a total of
 10 11,173.50 hours across three years of litigation against the well-financed technology giant,
 11 Facebook, even though recovery was uncertain, performing the following tasks, among others:
 12 (1) extensive pre-suit investigation, (2) preparation and filing of multiple complaints,
 13 (3) successful opposition to Facebook’s motion to dismiss, (4) successfully moving for
 14 certification of an injunction class, (5) intensive discovery and prevailing on multiple discovery
 15 motions, and (6) participation in four settlement mediation sessions. *See* Declaration of Class
 16 Counsel (“Joint Decl.”) at ¶¶ 5-23.

17 A chronological summary of Class Counsel’s work is provided below.

18 **A. Case Investigation and Factual Research Prior to Filing (September 2013 to** 19 **December 2013)**

20 Class Counsel began work on this action at the beginning of September, 2013, four
 21 months prior to filing. That pre-filing investigation included extensive review of Facebook’s
 22 messaging function, consultation with multiple experts, review of Facebook’s terms of service
 23 and privacy policies during the relevant time period and investigation of publicly available
 24 information related to the alleged conduct.

25 **B. Consolidation of Actions and Successful Opposition to Facebook’s Motion to** 26 **Dismiss (January 2014 to December 2014)**

27 Plaintiffs, on behalf of themselves and those similarly situated, commenced this action
 28 (the “Action”) on December 30, 2013. In their initial complaint, Plaintiffs asserted claims for
 violations of the Electronic Communications Privacy Act, 18 U.S.C. §§ 2510 *et seq.* (“ECPA”);

the California Invasion of Privacy Act, Cal. Penal Code §§ 630 *et seq.* (“CIPA”); and California’s Unfair Competition Law California Business and Profession Code §§ 17200 *et seq.* (“UCL”). Therein, Plaintiffs alleged that Facebook, as a routine policy and business practice, captured and reads 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. (Dkt. 1).

On January 21, 2014, David Shadpour filed a related action, which alleged similar facts and averred identical causes of action against Facebook (*see Shadpour v. Facebook, Inc.*, Case No. 5:14-cv-00307-PSG (N.D. Cal.), Dkt. 1).

Class Counsel conferred with counsel for Shadpour and successfully negotiated an agreement to seek consolidation of the actions. Joint Decl. at ¶ 10. On April 15, 2014, the Court entered an order granting Plaintiffs’ Motion to Consolidate the Related Actions (the “Consolidation Order”) and consolidating the related actions for all purposes. (*See* Dkt. 24.). Following entry of the Court’s Consolidation Order, the Class Representatives filed a Consolidated Amended Complaint on April 25, 2014, 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.).¹

On June 17, 2014, Facebook filed a Motion to Dismiss Plaintiffs’ Consolidated Amended Complaint. (*See* Dkt. 29.) Plaintiffs filed an opposition (*see* Dkt. 31), and Facebook, in turn, filed a reply brief (*see* Dkt. 35). On December 23, 2014, the Court issued an order granting in part and denying in part Facebook’s Motion to Dismiss Plaintiffs’ Consolidated Amended Complaint, dismissing the claims under CIPA § 632 and the UCL, but denying dismissal of the claims under ECPA and CIPA § 631. (*See* Dkt. 43.)

C. Discovery and Discovery-Related Motions Practice (January 2015 to October 2015)

Following entry of the Court’s order granting in part and denying in part Facebook’s

¹ On October 2, 2015, David Shadpour voluntarily dismissed his claims, with prejudice, pursuant to Federal Rule of Civil Procedure 41(a). (*See* Dkt. 123.)

1 motion to dismiss the Consolidated Amended Complaint, the parties engaged in almost two years
 2 of extensive discovery, including the production of hundreds of thousands of pages of documents,
 3 fact and expert depositions of 18 witnesses (spanning 19 days of testimony), informal conferences
 4 and discussions, hundreds of hours reviewing and analyzing Facebooks source code and detailed
 5 technical documentation, substantial discovery motion practice and the exchange of hundreds of
 6 pages of written discovery requests and responses. Joint Decl. at ¶ 12.

7 More specifically, during the ten-month period between the Court’s order on Facebook’s
 8 motion to dismiss and Plaintiffs’ filing of their motion for class certification, Plaintiffs
 9 propounded three sets of requests for Production (totaling 60 Requests), two sets of
 10 Interrogatories (totaling eight Interrogatories), and a Request for Admission. Plaintiffs also
 11 served a third-party subpoena—consisting of three document requests—on one of Facebook’s
 12 outside PR agencies. Similarly, during this time period Plaintiffs took five depositions of
 13 Facebook witnesses, including multiple 30(b) depositions covering numerous highly technical
 14 topics.² Joint Decl. at ¶ 13.

15 Plaintiffs’ review and analysis of Facebook source code was particularly time consuming,
 16 given the complexity of Facebook’s systems (*see, e.g.*, Dkt. 122 at 3; Dkt. 130 at 8), which
 17 Facebook characterized as “complicated and vast” (Dkt. 113 at 5). Indeed, this extensive source
 18 code review and analysis was at the core of discovery in this case. Joint Decl. at ¶ 14. It
 19 ultimately led to the articulation of the additional practices described in Plaintiff’s motion for
 20 class certification as well as in the Second Amended Complaint, as the Court recognized. *See,*
 21 *e.g.*, Order Granting in Part and Denying in Part Motion for Class Certification (Dkt. 192 at 4, 6).

22 Facebook propounded commensurate discovery, in the form of two sets of Requests for
 23 Production, each, for Plaintiffs Campbell and Hurley (totaling 30 Requests per Plaintiff), one set
 24 of Requests for Production for Plaintiff Shadpour (totaling 22 Requests), two sets of
 25 Interrogatories, each, to Plaintiffs Campbell and Hurley (totaling 15 Interrogatories for Plaintiff

26 ² The depositions covered a wide spectrum of technical topics, including the operation of
 27 Facebook’s source code underlying the architecture related to Private Message functionality, site
 28 security, and Facebook’s creation and use of data and metadata from the processing of URLs
 contained within Private Messages.

Campbell and 14 for Plaintiff Hurley), one set of Interrogatories to Plaintiff Shadpour (totaling 11 Interrogatories), and one set of Requests for Admission, each, for Plaintiffs Campbell and Hurley (totaling four Requests per Plaintiff). Additionally, Plaintiffs defended numerous depositions: all three Plaintiffs were deposed, while four third-party acquaintances of Plaintiffs (with whom Plaintiffs corresponded via Facebook's private message function) were noticed for deposition by Facebook, and of these four individuals, three were ultimately deposed. Joint Decl. at ¶ 15.

In addition, during this same period the parties engaged in substantial letter briefing before Magistrate Judge Maria-Elena James, on a host of discovery issues ranging, *inter alia*, from incomplete interrogatory responses and document production to 30(b)(6) deposition topics to regulatory filings with EU agencies. (*See*, Dkt. Nos. 77, 95, 112, 113, 122.). Moreover, during this same period, the parties engaged in protracted negotiation over the production of Facebook's source code, involving an extensive meet and confer process, contested briefing (*see, e.g.*, Dkt. Nos. 84-85), and ultimately a joint stipulation in which Facebook agreed to produce source code for the time period of September 1, 2009 through December 31, 2012. (Dkt. 90).

During this time period, the parties also engaged in their first mediation session on August 19, 2015, before Cathy Yanni of JAMS. Joint Decl. at ¶ 17.

D. Class Certification Briefing and Expert Discovery (November 2015 to March 2016)

During the next portion of the discovery phase, Plaintiffs filed a Motion for Class Certification. (*See* Dkt. 138.) Defendants filed an opposition (*see* Dkt. 147-4), and Plaintiffs, in turn, filed a reply brief (*see* Dkt. 167). Over the course of this time period, the parties continued with discovery, with both Plaintiffs and Facebook deposing each others' experts in the class certification briefing, and Plaintiffs taking additional fact witness depositions. The parties also continued to encounter, negotiate and brief discovery disputes. (*See, e.g.*, Dkt. Nos. 186,³ 189 190.).

On May 18, 2016, the Court issued an order granting in part and denying in part Plaintiffs'

³ Requesting a telephonic conference to compel Facebook to provide portions of four separate letter briefs related to (1) Plaintiffs' Requests for Production concerning damages; (2) topics to which produced documents alluded in Facebook's current production; (3) configuration tables; and (4) Facebook's "predictive coding" used in the course of document production.

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

14 **E. Post-Certification Discovery and Settlement Negotiations (April 2016 to**
 15 **November 2016)**

16 Subsequent to the filing of Plaintiffs’ Second Amended Complaint, discovery in this
 17 Action continued. Facebook propounded a third set of Interrogatories, each, to Plaintiffs
 18 Campbell and Hurley, and Plaintiffs propounded a fourth and fifth set of Requests for Production
 19 and third and fourth set of Interrogatories. Plaintiffs continued with the deposition of additional
 20 fact witnesses, as well. Joint Decl. at ¶ 20. During this time, Plaintiffs filed three motions to
 21 compel discovery (Dkt. Nos. 206, 207, 208),⁴ which were opposed by Facebook (Dkt. Nos. 214,
 22 215, 216) and which were ultimately denied on October 4, 2016 by the Court, who instead
 23 ordered Facebook to provide the alternative discovery described in Facebook’s motion papers
 24 (Dkt. No. 218).

25 Parallel to the above-described discovery, the parties also worked diligently on exploring
 26 the possibility of settlement, beginning with a second mediation session before Cathy Yanni on
 27 July 21, 2016. While not yielding a resolution to the Action, the parties agreed to come back for

28 ⁴ Respectively, these motions sought to compel production of source code, configuration tables,
 and further document searches.

1 a third mediation session, which occurred on July 28, 2016. This third mediation was also
 2 unsuccessful. For months following the parties' third mediation session, the parties continued to
 3 negotiate informally parallel with continued discovery. Eventually, the parties agreed to attend a
 4 fourth mediation, which took place on December 7, 2016 before Randall Wulff. Joint Decl. at
 5 ¶ 21.

6 **F. Mediation and Settlement Agreement (December 2016 to January 2017)**

7 As a result of these cumulative efforts, the parties were able to reach an agreement-in-
 8 principle to resolve this Action at the December 7, 2016 mediation, and on December 23, 2016,
 9 the parties filed a Joint Status Report, advising the Court that they had reached a settlement-in-
 10 principle. (*See* Dkt. 222). Thereafter, the parties worked diligently to memorialize the terms of the
 11 settlement, first in a Memorandum of Understanding executed on February 9, 2017. Prior to that
 12 execution, on February 3, 2017, to facilitate agreement on issues related to the petition for the
 13 award of attorney's fees and costs, Class Counsel provided Facebook with the monthly time
 14 summaries of Class Counsel's lodestar to date. Joint Decl. at ¶ 22.

15 **G. Work after Execution of Memorandum of Understanding (February 2017 to**
 16 **Present)**

17 Subsequent to the execution of the Memorandum of Understanding, Class Counsel
 18 negotiated and drafted the Settlement Agreement executed and filed with this Court on March 1,
 19 2017 (Dkt. 227-3), drafted the Motion for Preliminary Approval of Class Action Settlement and
 20 related filings (Dkt. 227), attending the April 12, 2017 hearing on this motion, implemented the
 21 notice program ordered by this Court and conferred and coordinated with Facebook on issues
 22 related to the settlement. Joint Decl. at ¶ 23.

23 **III. THE REQUESTED ATTORNEYS' FEES AND COSTS ARE FAIR,**
 24 **REASONABLE, AND APPROPRIATE UNDER THE CIRCUMSTANCES**

25 In a class action settlement, a court may award reasonable attorneys' fees and costs that
 26 are authorized by law or by the parties' agreement. *See* Fed. R. Civ. P. 23(h); *see also Hendricks*
 27 *v. Starkist Co.*, 2016 U.S. Dist. LEXIS 134872, at *34 (N.D. Cal. Sept. 29, 2016) (stating a court
 28 has the power to award reasonable attorneys' fees and costs where "a litigant proceeding in a

1 representative capacity secures a ‘substantial benefit’ for a class of persons.”).

2 After review of monthly summaries of Class Counsel’s time records demonstrating an
3 aggregate lodestar of \$6,525,168.50 through February 2, 2017, Facebook agreed to take no
4 position on an award of attorneys’ fees and costs of up to \$3,890,000. SA at ¶ 57. At that time,
5 Class Counsel approximated that they would seek \$3,230,000 in fees – a significant reduction to
6 roughly *fifty percent* of lodestar – and \$660,000 in costs; however, it was agreed Class Counsel
7 may apply in different amounts not to exceed \$3,890,000. *Id.* As detailed below, after further
8 review of time records and expenses, Class Counsel seeks \$3,236,304.69 in attorney’s fees
9 (roughly 50% of lodestar) and \$653,695.31 in expenses.

10 Given that Class Counsel agreed to a significant lodestar reduction to avoid extended
11 litigation and Facebook agreed to take no contrary position, “the court need not inquire into the
12 reasonableness of the fees . . . with precisely the same level of scrutiny as when the fee amount is
13 litigated” as “the parties are compromising precisely to avoid litigation.” *Staton v. Boeing*, 327 F.
14 3d 938, 966 (9th Cir. 2003). The Court’s role is instead “to ensure that the Parties’ agreement on
15 fees and expenses is reasonable and does not reflect a collusive settlement placing the interests of
16 counsel above the interest of the Class.” *Sadowska v. Volkswagen Group of America, Inc.*, 2013
17 U.S. Dist. LEXIS 188582 (C.D. Cal. Sept. 25, 2013). However, the Court must still ensure that
18 the attorney’s fees and costs awarded are “fundamentally fair, adequate, and reasonable.” *See*
19 *Staton*, 327 F.3d at 952. In this case, the amount Class Counsel agreed to accept in attorney’s
20 fees is roughly half their lodestar, making it eminently fair, reasonable, and adequate for the class.
21 *See, infra*, case cited at p. 15 (finding that negative multiplier suggests the reasonableness of a
22 negotiated fee). *Gong-Chun v. Aetna*, No. 1:09-cv-01995-SKO, 2012 U.S. Dist. LEXIS 96828 at
23 *53 (E.D. Cal. Jul. 12, 2012).

24 ECPA provides for an award of reasonable attorneys’ fees and costs. *See* 18 U.S.C.
25 §2520(b)(3) (providing appropriate relief includes “a reasonable attorney’s fee and other litigation
26 costs reasonably incurred.”); *DirecTV, Inc. v. Yee*, 2005 U.S. Dist. LEXIS 37277, at *13 (N.D.
27 Cal. April 26, 2005) (“DirecTV is also entitled to reasonable attorney’s fees and costs incurred in
28 prosecuting its claims for violations of the ECPA”). In addition, in light of the CIPA claim, the

requested attorney's fees are appropriate in this Action pursuant to California's "private attorney general" statute, which provides for an award of attorney's fees "to a successful party against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest if . . . a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons." *See* Cal. Civ. Proc. Code § 1021.5; *Serrano v. Unruh*, 652 P.2d 985, 991 (Cal. 1982) (explaining that such an award advances "the policy of encouraging private actions to vindicate important rights affecting the public interest").⁵

A. Class Counsel Obtained an Excellent Result

As detailed in the concurrently filed Motion for Final Approval of Class Action Settlement, the Settlement before the Court provides significant relief for the Class that is specifically tailored to the harm alleged. As the Settlement reflects, Facebook made substantial changes that bring Facebook's message processing practices in compliance with Class Counsel's view of ECPA and CIPA's requirements. Specifically, Facebook confirmed that the alleged unlawful uses of URL data challenged in the operative Second Amended Complaint ceased—namely, Facebook confirmed that, as of the respective dates set forth in the Settlement, it ceased utilizing data from URLs within private messages to (1) generate recommendations to its users in its Recommendations Feed; (2) share anonymous, aggregate data with third parties through its Insights feature; and (3) increase "Like" counter numbers on third party websites. In addition, Facebook confirmed that, as of the date of the Settlement, it was 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.

⁵ The Legislature enacted the private attorney general statute so that the costs of enforcing important rights in the public interest would be shifted from private plaintiffs to defendants in certain circumstances. *See* Cal. Civ. Proc. Code § 1021.5; *see also Serrano*, 32 Cal. 3d at 632-33 (holding that "absent facts rendering the award unjust, parties who qualify for a fee should recover for all hours reasonably spent, including those on fee-related matters.").

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. In sum, the Settlement addresses each of the challenged practices that the Court certified for class treatment and achieves the goals of the litigation as articulated in the operative Second Amended Complaint, while protecting the interests of any Settlement Class Members that may not be remedied through injunctive relief by specifically excluded claims for monetary relief from the Settlement Class Members' Released Claims.

B. The Fee Amount Was Negotiated at Arms' Length by Skilled and Experienced Counsel

"Ideally, litigants will settle the amount of a fee." *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983). Thus, a court "should refrain from substituting its own value for a properly bargained-for agreement." *In re Apple Computer, Inc. Derivative Litig.*, No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195, at *12 (N.D. Cal. Nov. 5, 2008) (awarding attorneys' fees based on "the terms of the settlement"). Courts therefore apply lessened scrutiny to fee agreements "negotiated at arm's length with sophisticated defendants by the attorneys . . . intimately familiar with the case" and where the fee "neither detracts from nor diminishes the payments and benefits that will flow to Plaintiffs themselves." *In re First Capital Holdings Corp. Fin. Prods. Sec. Litig.*, MDL No. 901, 1992 U.S. Dist. LEXIS 14337, at *12 (C.D. Cal. June 10, 1992) (approving agreed-upon fee of \$8 million); *accord Sadowska*, 2013 U.S. Dist. LEXIS 188582, at *25-26.

These circumstances characterize the situation here. The parties here did not reach an agreement on settlement until after (i) extensive discovery had been conducted, (ii) Facebook's motion to dismiss was briefed, litigated and decided, (iii) Plaintiffs' motion for class certification was fully briefed, litigated and decided, (iv) factual discovery was fully mature and substantially completed, and (v) the parties participated in four mediations facilitated by two highly respected mediators. These circumstances demonstrate that both parties were fully apprised of the strengths and weaknesses of their respective positions. Further, it was only after reaching an agreement on the Settlement's substantive terms that the parties turned to negotiating the fee. Further demonstrating that the fee is fair and the product of good-faith negotiations, Facebook reviewed

1 monthly summaries of Class Counsel's time records prior to agreeing to take no position in
 2 opposition to the fee requested in this motion. *See* Settlement Agreement, ¶¶ 57-60 (Dkt. 227-3).

3 **C. Application of the Lodestar Method Demonstrates the Reasonableness of the**
 4 **Requested Fee**

5 The Ninth Circuit recently reconfirmed that "[t]here is a strong presumption that the
 6 lodestar figure represents a reasonable fee." *Rodriguez v. West Publ. Corp.*, 602 Fed. Appx. at
 7 387. "Only in rare or exceptional cases will an attorney's reasonable expenditure of time on a
 8 case not be commensurate with the fees to which he is entitled." *Cunningham v. County of Los*
 9 *Angeles*, 879 F.2d 481, 488 (9th Cir. 1988) (emphasis omitted). Lodestar is calculated by
 10 multiplying the number of hours reasonably expended on the litigation by a reasonable hourly
 11 rate. *Hensley*, 461 U.S. at 433; *Paul, Johnson, Alston & Hunt v. Graulity*, 886 F.2d 268, 272 (9th
 12 Cir. 1989). As this figure approximates the market value of the legal services, it "presumptively
 13 provides an accurate measure of reasonable attorney's fees." *In re Toys R Us FACTA Litig.*, 295
 14 F.R.D. 438, 460 (C.D. Cal. 2014), (quoting *Harris v. Marhoefer*, 24 F.3d 16, 18 (9th Cir. 1994));
 15 *Guam Soc'y of Obstetricians & Gynecologists v. Ada*, 100 F.3d 691, 696 (9th Cir. 1996).

16 The accompanying Declaration of Class Counsel sets forth the hours worked and the
 17 billing rates used to calculate Class Counsel's lodestar in this Action, including both a
 18 chronological summary of the work performed (¶¶ 5-23) and a tabulation of the hours spent on
 19 various categories of activities related to the Action (¶¶ 24-33). *See Winterrowd v. American*
 20 *General Annuity Insurance Co.*, 556 F.3d 815, 827 (9th Cir. 2009) ("Testimony of an attorney as
 21 to the number of hours worked on a particular case is sufficient evidence to support an award of
 22 attorney fees, even in the absence of detailed time records.") (internal quotations omitted). In
 23 total, Class Counsel and their professional staffs spent 11,173.50 hours working on this case for a
 24 lodestar of \$6,509,773. Joint Decl. at ¶ 31.

25 **1. The Time Class Counsel Devoted to this Case Was Appropriate**

26 Class Counsel's efforts were necessary to achieving the Settlement and are consistent with
 27 the time expended by class counsel in similar litigation. *See, e.g., In re Countrywide Fin. Corp.*
 28 *Customer Data Security Breach Litig.*, No. 3:08-md-01998-TBR, 2010 WL 3341200, at *10

(W.D. Ky. Aug. 23, 2010) (11,453 hours in case that settled about one year after filing of complaint); *In re Sony Gaming Networks & Customer Data Security Breach Litig.*, 996 F. Supp. 2d 942, No. 3:11-md-02258-AJB-MDD (S.D. Cal. Apr. 30, 2015) (5,580 hours where class certification had not been briefed).

As detailed in the Declaration of Class Counsel and Section II above, Class Counsel expended 11,173.50 hours performing the following tasks, among others: (1) engaged in extensive pre-suit investigation, (2) prepared and filed multiple complaints, (3) successfully opposed Facebook's motion to dismiss, (5) undertook extensive discovery, document review, technical review and depositions, and brought myriad successful discovery motions, (4) moved for and was granted certification of an injunction class, (6) prepared for and participated in four settlement mediations before mediators, and (7) negotiated the terms of the Settlement and the documents related thereto. *See* Joint Decl. at ¶¶ 5-23, 31.

Moreover, in taking this matter on a contingent basis, Class Counsel assumed considerable risk. Indeed, this Action involves novel issues predicated on claims involving the ECPA's and CIPA's application to electronic messages. The caselaw in this context is not fully developed, which resulted in the parties advancing conflicting interpretations of certain elements of Plaintiffs' ECPA and CIPA claims during the litigation, including the definition of message "content," the extent to which an interception of an electronic message occurs "in transit," the contours of the affirmative defense of implied consent, and the extent to which an "ordinary course of business" defense applies to an electronic communications service provider's acquisition and/or use of message content. Moreover, these novel legal issues were disputed in a highly technical context that required Class Counsel, and their retained experts, to review extensive source code and technical documents. These issues, and other difficult issues implicated by these claims, required Class Counsel to research and devise litigation strategies to move the case through class certification towards trial, without the certainty of ever receiving compensation. Joint Decl. at ¶¶ 12-14. Despite facing such risks, Class Counsel effectively prosecuted this case, foregoing other work in the process. Thus, the time devoted by Class Counsel to this Action on a purely contingent basis supports the requested fee.

1 **2. Class Counsel's Hourly Rates Are Reasonable**

2 The accompanying Declaration of Class Counsel sets forth the billing rates used to
 3 calculate their lodestars and summarize the experience of the attorney timekeepers who worked
 4 on this litigation. Joint Decl. at ¶¶ 24-33. In assessing the reasonableness of an attorney's hourly
 5 rate, courts consider whether the claimed rate is "in line with those prevailing in the community
 6 for similar services by lawyers of reasonably comparable skill, experience and reputation." *Blum*
 7 *v. Stenson*, 465 U.S. 886, 895-96 n.11 (1984). Courts apply each biller's current rates for all
 8 hours of work performed, regardless of when the work was performed, as a means of
 9 compensating for the delay in payment.

10 Class Counsel here are experienced, highly regarded members of the bar. They have
 11 brought to this case extensive experience in data privacy litigation, consumer class actions and
 12 complex litigation, including specific experience litigating and settling cases regarding data
 13 privacy. Joint Decl. at ¶¶ 40-55.; *see also* Dkt. 227-2 at pp. 6-13. Class Counsel's customary
 14 rates, which were used in calculating the lodestar here, are in line with prevailing rates in this
 15 District, have been approved by courts in this District and other courts in comparable markets,
 16 and are paid by hourly-paying clients. Joint Decl. at ¶¶ 27-30.

17 **D. The Requested Fee Represents a Significant Negative Multiplier**

18 For the purpose of awarding class counsel a reasonable fee, the lodestar may be adjusted
 19 in light of the (1) results obtained, (2) novelty and complexity of the questions presented, (3) skill
 20 exhibited by counsel, (4) preclusion of other legal work because of counsel's acceptance and
 21 prosecution of the case, and (5) risk of nonpayment. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011,
 22 1029 (9th Cir. 1998); *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975); *Ketchum*
 23 *v. Moses*, 24 Cal.4th 1122, 1132, 17 P.3d 735, 741 (Cal. 2001). The Ninth Circuit recently held
 24 that a district court "*must* apply a risk multiplier to the lodestar 'when (1) attorneys take a case
 25 with the expectation they will receive a risk enhancement if they prevail, (2) their hourly rate does
 26 not reflect that risk, and (3) there is evidence the case was risky.' Failure to apply a risk
 27 multiplier in cases that meet these criteria is an abuse of discretion." *Stetson v. Grissom*, 821 F.3d
 28 1157 (9th Cir. 2016) (*italics in original*); *see also Stanger v. China Elec. Motor, Inc.*, 812 F.3d

734 (9th Cir. 2016). Each of these three factors is present here – Class Counsel anticipated a risk multiplier upon commencement of this action; the hourly rates utilized in the lodestar calculation include no risk multiplier; and this case posed heightened risks due to the application of novel legal issues in a highly technical context. Joint Decl. at ¶ 33.

However, to avoid protracted litigation on the fee issue and facilitate settlement, Class Counsel agreed to seek an award that reflects a significant *negative* adjustment of roughly fifty percent on the documented lodestar. Courts within this District and its sister district have held that a significant negative multiplier “strongly suggests the reasonableness of the negotiated fee.” *Rosado v. Ebay Inc.*, No. 5:12-CV-04005-EJD, 2016 U.S. Dist. LEXIS 80760, at *26 (N.D. Cal. June 21, 2016) (negative multiplier of 0.54); *See Gong-Chun v. Aetna*, No. 1:09-CV-01995-SKO, 2012 U.S. Dist. LEXIS 96828, at *53 (E.D. Cal. Jul. 12, 2012) (holding that a negative multiplier of 0.79 suggests that the negotiated fee award is reasonable); *Chun-Hoon v. Mckee Foods Corp.*, 716 F. Supp. 2d 848, 854 (N.D. Cal. 2010) (reasoning that a negative multiplier suggests a reasonable and fair valuation of the services provided by class counsel). In short, the negative multiplier applied to the presumptively reasonable lodestar confirms the fairness of the requested fee award.

The contingent nature of the fee, alone, would justify a positive multiplier in this case, even though Class Counsel do not seek that. *See In re Washington Public Power Supply System Secs. Litig.*, 19 F.3d 1291, 1299 (9th Cir. 1994) (“Contingent fees that may far exceed the market value of the services if rendered on a non-contingent basis are accepted in the legal profession as a legitimate way of assuring competent representation for plaintiffs who could not afford to pay on an hourly basis regardless whether they win or lose.”); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 (9th Cir. 2002) (courts reward successful class counsel in contingency case “by paying them a premium over their normal hourly rates”). The fact that Class Counsel assumed representation here on a purely contingent basis strongly supports the reasonableness of the amount requested. That is particularly so given the complex and novel nature of the issues involved in this case and the corresponding risks that Class Counsel might receive nothing for their efforts.

1 **E. Class Counsel’s Litigation Expenses Were Reasonably Incurred in**
 2 **Furtherance of the Prosecution of the Claims, and Should be Awarded**

3 The Settlement terms and well-settled precedent support Class Counsel’s entitlement to
 4 recovery of out-of-pocket costs reasonably incurred in investigating, prosecuting, and settling
 5 these claims. *See, e.g., In re Media Vision Tech. Sec. Litig.*, 913 F. Supp. 1362, 1366 (N.D. Cal.
 6 1996). Class Counsel incurred \$653,695.31 in unreimbursed out-of-pocket costs over the course
 7 of this litigation. Joint Decl. at ¶¶ 34-37. Over sixty percent of those costs were associated with
 8 expert and consultant work, including extensive expert analysis of the relevant source code and
 9 related technical documents necessary to fully understand and document the architecture related
 10 to Facebooks’ private messaging function. Joint Decl. at ¶¶ 34-37 and Ex. 2 attached thereto.
 11 Other significant costs include mediation fees, deposition transcripts, travel for depositions and
 12 hearings, legal research, postage, and other customary litigation expenses. *Id.* Moreover, as
 13 detailed in the Declaration of Class Counsel, these costs were reasonably incurred in furtherance
 14 of the investigation, prosecution, and Settlement of the Action and should be reimbursed. *Id.*; *see*
 15 *In re Toys R Us FACTA Litig.*, 295 F.R.D. at 469.

16 **F. The Requested Service Awards Are Reasonable and Should Be Approved**

17 As the Ninth Circuit has recognized, “named plaintiffs, as opposed to designated class
 18 members who are not named plaintiffs, are eligible for reasonable incentive payments.” *Staton*,
 19 327 F.3d at 977; *Rodriguez v. West Publishing Corp.*, 563 F.3d at 958 (service awards “are fairly
 20 typical in class action cases”). Such awards are “intended to compensate class representatives for
 21 work done on behalf of the class [and] make up for financial or reputational risk undertaken in
 22 bringing the action.” *Id.*; *see also Van Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294, 299-300
 23 (N.D. Cal. 1995).

24 In this District, service awards in the amount of \$5,000 per class representative are
 25 “presumptively reasonable.” *In re LinkedIn User Privacy Litig.*, 309 F.R.D. 573, 592 (N.D. Cal.
 26 2015); *Dyer v. Wells Fargo Bank, N.A.*, 303 F.R.D. 326, 335 (N.D. Cal. 2014); *Faigman v. AT &*
 27 *T Mobility LLC*, No. C-06-04622-MHP, 2011 WL 672648, at *5 (N.D. Cal. Feb. 16, 2011).

Here, Class Counsel seek, and Facebook does not oppose, service awards in the amount \$5,000 for each of the Plaintiffs serving as Class Representatives. *See* Settlement Agreement, ¶ 60. The requested service awards are well justified under the circumstances. The Class Representatives sat for day-long depositions, produced almost one thousand private message communications in discovery (and reviewed over one thousand messages for responsiveness to Facebook's Requests for Production), collectively responded to 31 interrogatories, answered four requests for admissions, and invested substantial time over the past three years in collaborating and communicating with Class Counsel, monitoring the litigation and reviewing case filings and other pertinent documents. Joint Decl. at ¶¶ 15, 38-39, and Exhibits 3, 4 attached thereto. Thus, the requested service awards of \$5,000 to each Class Representative are reasonable and justified.

IV. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court: (a) award Class Counsel attorneys' fees of \$3,236,304.69 and expenses of \$653,695.31, with such amount to be paid by Facebook as forth in the Settlement; and (b) grant service awards in the amounts of \$5,000 for each of the Class Representatives.

Dated: May 26, 2017

By: /s/ Hank Bates

CARNEY BATES & PULLIAM, PLLC
Hank Bates (CA #167688)
hbates@cbplaw.com
Allen Carney
acarney@cbplaw.com
David Slade
dslade@cbplaw.com
519 West 7th St.
Little Rock, AR 72201
Telephone: (501) 312-8500
Facsimile: (501) 312-8505

1 Michael W. Sobol (CA #194857)
2 msobol@lchb.com
3 David T. Rudolph
4 drudolph@lchb.com
5 Melissa Gardner
6 mgardner@lchb.com
7 LIEFF CABRASER HEIMANN &
8 BERNSTEIN, LLP
9 275 Battery Street, 29th Floor
10 San Francisco, CA 94111-339
11 Telephone: 415.956.1000
12 Facsimile: 415.956.1008

13 Rachel Geman
14 rgeman@lchb.com
15 Nicholas Diamond
16 ndiamond@lchb.com
17 LIEFF CABRASER HEIMANN &
18 BERNSTEIN, LLP
19 250 Hudson Street, 8th Floor
20 New York, NY 10013-1413
21 Telephone: 212.355.9500
22 Facsimile: 212.355.9592

23 *Class Counsel*
24
25
26
27
28

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 7th 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.
27
28

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

**JOINT DECLARATION OF MICHAEL
SOBOL AND HANK BATES IN SUPPORT
OF PLAINTIFFS' MOTION FOR AN
AWARD OF ATTORNEYS' FEES AND
COSTS AND SERVICE AWARDS**

Date: August 9, 2017

Time: 9:00 a.m

Judge: Hon. Phyllis J. Hamilton

Place: Courtroom 3, 3rd Floor

1 We, Michael Sobol and Hank Bates, declare as follows:

2 1. Michael Sobol is a member in good standing of the California State Bar and a
3 partner in the law firm Lief, Cabraser, Heimann & Bernstein, LLP (“LCHB”), counsel for
4 Plaintiffs and the Class in this proceeding. He is the LCHB attorney principally responsible for
5 overseeing LCHB’s work in this proceeding.

6 2. Hank Bates is a member in good standing of the California and Arkansas State
7 Bars and a partner in the law firm Carney Bates & Pulliam PLLC (“CBP”), counsel for Plaintiffs
8 and the Class in this proceeding. He is the CBP attorney principally responsible for overseeing
9 CBP’s work in this proceeding.

10 3. We submit this declaration jointly in support of Plaintiffs’ Motion for Attorneys’
11 Fees and Expenses and for Service Awards for Plaintiffs.

12 4. Except as otherwise noted, we have personal knowledge of the facts set forth
13 herein, and if called to testify thereto, could and would do so competently, including with respect
14 to the information provided regarding our respective law firms.

15 **SUMMARY OF CLASS COUNSEL’S WORK IN THIS CASE**

16 5. As summarized below, investigating, litigating, and negotiating a resolution of this
17 matter required substantial commitments of time and resources from our firms. Throughout the
18 litigation, all reasonable efforts were made to avoid duplication of efforts and to ensure the most
19 efficient management and prosecution of this matter reasonably possible.

20 6. A chronological summary of Class Counsel’s work is provided below.

21 **I. Case Investigation and Factual Research Prior to Filing (September 2013 to**
22 **December 2013)**

23 7. Class Counsel began work on this action at the beginning of September, 2013, four
24 months prior to filing. That pre-filing investigation included extensive review of Facebook’s
25 messaging function, consultation with multiple experts, review of Facebook’s terms of service
26 and privacy policies during the relevant time period and investigation of publicly available
27 information related to the alleged conduct.
28

II. Consolidation of Actions and Successful Opposition to Facebook’s Motion to Dismiss (January 2014 to December 2014)

8. Plaintiffs, on behalf of themselves and those similarly situated, commenced this action (the “Action”) on December 30, 2013. In their initial complaint, Plaintiffs asserted claims for violations of the Electronic Communications Privacy Act, 18 U.S.C. §§ 2510 *et seq.* (“ECPA”); the California Invasion of Privacy Act, Cal. Penal Code §§ 630 *et seq.* (“CIPA”); and California’s Unfair Competition Law California Business and Profession Code §§ 17200 *et seq.* (“UCL”). Therein, Plaintiffs alleged that Facebook, as a routine policy and business practice, captured and reads 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.

9. On January 21, 2014, David Shadpour filed a related action, which alleged similar facts and averred identical causes of action against Facebook (*see Shadpour v. Facebook, Inc.*, Case No. 5:14-cv-00307-PSG (N.D. Cal.), Dkt. 1).

10. Class Counsel conferred with counsel for Shadpour and successfully negotiated an agreement to seek consolidation of the actions. On April 15, 2014, the Court entered an order granting Plaintiffs’ Motion to Consolidate the Related Actions (the “Consolidation Order”) and consolidating the related actions for all purposes. (*See* Dkt. 24.) Following entry of the Court’s Consolidation Order, the Class Representatives filed a Consolidated Amended Complaint on April 25, 2014, 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.).¹

11. On June 17, 2014, Facebook filed a Motion to Dismiss Plaintiffs’ Consolidated Amended Complaint. (*See* Dkt. 29.) Plaintiffs filed an opposition (*see* Dkt. 31), and Facebook, in

¹ On October 2, 2015, David Shadpour voluntarily dismissed his claims, with prejudice, pursuant to Federal Rule of Civil Procedure 41(a). (*See* Dkt. 123.)

turn, filed a reply brief (*see* Dkt. 35). On December 23, 2014, the Court issued an order granting in part and denying in part Facebook’s Motion to Dismiss Plaintiffs’ Consolidated Amended Complaint, dismissing the claims under CIPA § 632 and the UCL, but denying dismissal of the claims under ECPA and CIPA § 631. (*See* Dkt. 43.)

III. Discovery and Discovery-Related Motions Practice (January 2015 to October 2015)

12. Following entry of the Court’s order granting in part and denying in part Facebook’s motion to dismiss the Consolidated Amended Complaint, 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 and analyzing Facebook’s source code and detailed technical documentation, substantial discovery motion practice and the exchange of hundreds of pages of written discovery requests and responses.

13. More specifically, during the ten-month period between the Court’s order on Facebook’s motion to dismiss and Plaintiffs’ filing of their motion for class certification, Plaintiffs propounded three sets of requests for Production (totaling 60 Requests), two sets of Interrogatories (totaling eight Interrogatories), and a Request for Admission. Plaintiffs also served a third-party subpoena—consisting of three document requests—on one of Facebook’s outside PR agencies. Similarly, during this time period Plaintiffs took five depositions of Facebook witnesses, including multiple 30(b) depositions covering numerous highly technical topics, including the operation of Facebook’s source code.²

14. Plaintiffs’ review and analysis of Facebook source code was particularly time consuming, given the complexity of Facebook’s systems, which included over 10 million lines of code (*see, e.g.*, Dkt. No. 122 at 3; Dkt. No. 130 at 8), and which Facebook characterized as “complicated and vast” (Dkt. No. 113 at 5), further taking the position that source code review was extraordinary and “unprecedented...in a consumer class action.” (Dkt. No. 214 at 2; *see also* Dkt. No. 114 at 1). Indeed, this extensive source code review and analysis was at the core of

² Broadly, the depositions covered the operation of Facebook architecture related to Private Message functionality, site security, and Facebook’s creation and use of data and metadata from the processing of URLs contained within Private Messages.

1 discovery in this case. It ultimately led to the articulation of the additional practices described in
 2 Plaintiffs' motion for class certification as well as in the Second Amended Complaint, as the
 3 Court recognized. *See, e.g.*, Order Granting in Part and Denying in Part Motion for Class
 4 Certification (Dkt. No. 192 at 4, 6).

5 15. Facebook propounded commensurate discovery, in the form of two sets of
 6 Requests for Production, each, for Plaintiffs Campbell and Hurley (totaling 30 Requests per
 7 Plaintiff), one set of Requests for Production for Plaintiff Shadpour (totaling 22 Requests), two
 8 sets of Interrogatories, each, to Plaintiffs Campbell and Hurley (totaling 15 Interrogatories for
 9 Plaintiff Campbell and 14 for Plaintiff Hurley), one set of Interrogatories to Plaintiff Shadpour
 10 (totaling 11 Interrogatories), and one set of Requests for Admission, each, for Plaintiffs Campbell
 11 and Hurley (totaling four Requests per Plaintiff). Additionally, Plaintiffs defended numerous
 12 depositions: all three Plaintiffs were deposed, while four third-party *acquaintances* of Plaintiffs
 13 (with whom Plaintiffs corresponded via Facebook's private message function) were noticed for
 14 deposition by Facebook, and of these four individuals, three were ultimately deposed.

15 16. In addition, during this same period the parties engaged in substantial letter
 16 briefing before Magistrate Judge Maria-Elena James, on a host of discovery issues ranging, *inter*
 17 *alia*, from incomplete interrogatory responses and document production to 30(b)(6) deposition
 18 topics to regulatory filings with EU agencies. *See*, Dkt. Nos. 77, 95, 112, 113, 122. Moreover,
 19 during this same period, the parties engaged in protracted negotiation over the production of
 20 Facebook's source code, involving an extensive meet and confer process, contested briefing (*see*,
 21 *e.g.*, Dkt. Nos. 84-85), and ultimately a joint stipulation in which Facebook agreed to produce
 22 source code for the time period of September 1, 2009 through December 31, 2012 (Dkt. 90).

23 17. During this time period, the parties also engaged in their first mediation session on
 24 August 19, 2015, before Cathy Yanni of JAMS.

25 **IV. Class Certification Briefing and Expert Discovery (November 2015 to March 2016)**

26 18. During the next portion of the discovery phase, Plaintiffs filed a Motion for Class
 27 Certification. (*See* Dkt. 138.) Defendants filed an opposition (*see* Dkt. 147-4), and Plaintiffs, in
 28 turn, filed a reply brief (*see* Dkt. 167). Over the course of this time period, the parties continued

1 with discovery, with both Plaintiffs and Facebook deposing each others' experts in the class
 2 certification briefing, and Plaintiffs taking additional fact witness depositions. The parties also
 3 continued to encounter, negotiate and brief discovery disputes. *See, e.g.*, Dkt. Nos. 186,³ 189
 4 190.

5 19. 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 a damages class under
 7 Federal Rule of Civil Procedure 23(b)(3), but granting certification of an injunctive-relief class
 8 under Federal Rule of Civil Procedure 23(b)(2). (*See* Dkt. 192.) Specifically, the Court certified
 9 for class treatment three specific alleged uses by Facebook of URLs included in private messages:
 10 (1) Facebook's cataloging URLs share 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 pp. 3-5). In addition, the Court directed the Plaintiffs to file a
 15 Second Amended Complaint "(1) revising the class definition to reflect the definition set forth in
 16 the class certification motion, and (2) adding allegations regarding the sharing of data with third
 17 parties." (*Id.* at p.6). In accord therewith, the Plaintiffs filed their Second Amended Complaint on
 18 June 7, 2016. (Dkt. 196).

19 **V. Post-Certification Discovery and Settlement Negotiations (April 2016 to November**
 20 **2016)**

21 20. Subsequent to the filing of Plaintiffs' Second Amended Complaint, discovery in
 22 this Action continued. Facebook propounded a third set of Interrogatories, each, to Plaintiffs
 23 Campbell and Hurley, and Plaintiffs propounded a fourth and fifth set of Requests for Production
 24 and third and fourth set of Interrogatories. Plaintiffs continued with the deposition of additional
 25 fact witnesses, as well. During this time, Plaintiffs filed three motions to compel discovery (Dkt.

26 ³ Requesting a telephonic conference to compel Facebook to provide portions of four separate
 27 letter briefs related to (1) Plaintiffs' Requests for Production concerning damages; (2) topics to
 28 which produced documents alluded in Facebook's current production; (3) configuration tables;
 and (4) Facebook's "predictive coding" used in the course of document production.

Nos. 206, 207, 208),⁴ which were opposed by Facebook (Dkt. Nos. 214, 215, 216) and which were ultimately denied on October 4, 2016 by the Court, who instead ordered Facebook to provide the alternative discovery described in Facebook's motion papers (Dkt. No. 218).

21. Parallel to the above-described discovery, the parties also worked diligently on exploring the possibility of settlement, beginning with a second mediation session before Cathy Yanni on July 21, 2016. While not yielding a resolution to the Action, the parties agreed to come back for a third mediation session, which occurred on July 28, 2016. This third mediation was also unsuccessful. For months following the parties' third mediation session, the parties continued to negotiate informally. Eventually, the parties agreed to attend a fourth mediation, which took place on December 7, 2016 before Randall Wulff.

VI. Mediation and Settlement Agreement (December 2016 to January 2017)

22. As a result of these cumulative efforts, the parties were able to reach an agreement-in-principle to resolve this Action at the December 7, 2016 mediation, and on December 23, 2016, the parties filed a Joint Status Report, advising the Court that they had reached a settlement-in-principle. (*See* Dkt. 222). Thereafter, the parties worked diligently to memorialize the terms of the settlement, first in a Memorandum of Understanding executed on February 9, 2017. Prior to that execution, on February 3, 2017, to facilitate agreement on issues related to the petition for the award of attorney's fees and costs, Class Counsel provided Facebook with the monthly time summaries.

VII. Work after Execution of Memorandum of Understanding (February 2017 to Present)

23. Subsequent to execution of the Memorandum of Understanding, Class Counsel negotiated and drafted the Settlement Agreement, executed and filed with this Court on March 1, 2017, drafted the Motion for Preliminary Approval of Class Action Settlement and related filings, attending the hearing on this motion, implemented the notice requirements ordered by this Court and conferred with Facebook on issues related to the settlement.

⁴ Respectively, these motions sought to compel production of source code, configuration tables, and further document searches.

SUMMARY OF TIME AND COSTS INCURRED

I. Time Incurred By Plaintiffs' Counsel

24. We have spent considerable time working on this case that could have been spent on other fee-generating matters. The time that we have spent on this case has been completely contingent on the outcome. We have not been paid for any of our time spent on this case, nor have we been reimbursed for any of the expenses we incurred in this case.

25. In total, from the inception of this litigation in September 2013 through April 30, 2017, the attorneys and staff at our firms have billed approximately 11,173.50 hours on this matter, for a total combined lodestar (for the two Class Counsel firms combined) of \$6,310,216.30. Attached hereto as **Exhibit 1** are summaries listing, for each of our firms, each lawyer, paralegal and other professional for which compensation is sought, the hours each individual has expended to date, their hourly billing rates, and their total lodestar.

26. The amounts included in Exhibit 1 are derived from our respective time records, which are prepared contemporaneously, describe tasks performed in 0.1 hour increments, and maintained in the ordinary course of business. Such amounts do not include many hours of time that we have written off in the exercise of billing discretion upon review of these time records.

27. Our respective firms' billing rates, which were used for purposes of calculating the lodestar here, have been approved by courts in California and throughout the country, are the usual and customary rates that our respective firms charge for services in other actions, and are set in accordance with prevailing market rates. The lodestar calculation provided here is based on our respective firms' 2017 billing rates. For any personnel who are no longer employed by the firm in question, their billing rate at the time they left the respective firm is used.

28. A sample of California federal courts that have approved LCHB's standard billing rates and reimbursement of costs as reasonable are:

a. *In re High-Tech Employee Antitrust Litig.*, No. 11-cv-02509-LHK, Dkt. No. 1112 (N.D. Cal. Sept. 2, 2015) (approving billing rates);

b. *In re: Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices, and Products Liability Litig.*, No. 10-ml-02151 JVS (FMOx), Dkt. No. 3933 (C.D. Cal.

1 June 24, 2013) (awarding requested fees and finding that “[c]lass counsel’s experience,
2 reputation, and skill, as well as the complexity of the case” justified their rates that ranged up to
3 \$950);

4 c. *In re TracFone Unlimited Serv. Plan Litig.*, 112 F. Supp. 3d 993, 1009
5 (N.D. Cal. 2015) (awarding requested attorneys’ fees);

6 d. *Steinfeld v. Discover Financial Services*, Case No. 3:12-cv-01118-JSW
7 (N.D. Cal. Mar. 31, 2014) (“Class counsel have submitted declarations that show the hourly rates
8 that they have requested are reasonable and have provided the Court with information about other
9 cases that approved their rates.”);

10 e. *Nwabueze v. AT&T Inc.*, No. C 09-01529 SI, 2014 U.S. Dist. LEXIS
11 11766, at *8 (N.D. Cal. Jan. 29, 2014) (“[T]he Court also finds that the rates requested are within
12 the range of reasonable hourly rates for contingency litigation approved in this District.”);

13 f. *Ross v. Trex Co., Inc.*, No. 09-cv-00670-JSW (N.D. Cal. Dec. 16, 2013)
14 (awarding requested attorneys’ fees);

15 g. *In re AXA Rosenberg Investor Litigation*, No. 11-00536-JSW (N.D. Cal.
16 April 2, 2012) (“The Court has also reviewed Lead Counsel’s hourly rates and concludes that
17 these rates are appropriate for attorneys in this locality of Lead Counsel’s skills and experience.”);

18 h. *Vedachalam v. Tata Consultancy Services, Ltd.*, No. C-06-0963-CW (N.D.
19 Cal. July 18, 2013) (“Class Counsel’s hourly rates are reasonable in light of their experience (as
20 reflected in their declarations and the declarations of their peers in the field of class action
21 litigation), and the rates charged are comparable to other attorneys in this field.”);

22 i. *Wehlage, et al. v. Evergreen at Arvin, LLP, et al.*, No. 4:10-cv-058390-CW
23 (N.D. Cal. Oct. 4, 2012) (“[T]he billing rates used by Class Counsel to calculate their lodestar are
24 reasonable and in line with prevailing rates in this District for personnel of comparable
25 experience.”);

26 j. *Holloway v. Best Buy Co., Inc.*, No. C-05-5056 PJH (MEJ) (N.D. Cal. Nov.
27 9, 2011) (“The rates used by Class Counsel are reasonable.”);

28

k. *Fulford v. Logitech, Inc.*, No. 08-cv-02041 MMC, 2010 U.S. Dist. LEXIS 144437, at *10 (N.D. Cal. Mar. 5, 2010) (“The Court further finds that Plaintiff’s Counsels’ hourly rates are reasonable for their skill and the work they performed.”).

29. A sample of California federal courts that have approved CBP’s requested fees and reimbursement of costs as reasonable include the following:

a. *Smith v. Intuit, Inc.*, No. 5:12-cv-00222 (N.D. Cal Oct. 1, 2013) (Docket No. 105) (granting requested attorneys’ fees);

b. *In re Bank of America Credit Protection Marketing & Sales Practices Litig.*, No. 11-md-2269 (N.D. Cal Jan. 16, 2013) (Docket No. 96) (granting requested attorneys’ fees);

c. *In re National Golf Properties, Inc. Securities Litigation*, No. 2:02-cv-1383-GHK-RZX (C.D. Cal. Oct. 5, 2004) (Docket No. 106), (granting requested attorneys’ fees);

d. *Valuepoint Partners, Inc. v. ICN Pharmaceuticals, Inc. Et al.*, No. 8:03-cv-0989 (C.D. Cal. Feb. 28, 2005) (Docket No. 109) (granting requested attorneys’ fees).

30. Federal and state courts throughout the country have likewise approved CBP’s requested fees and reimbursement of costs as reasonable. *See, e.g., In re Liberty Refund Anticipation Loan Litig.*, Case No. 1:12-cv-02949 (N.D. Ill.); *Middlesex County Retirement System v. Semtech Corp. et al*, Case No. 07-Civ-7183 (S.D.N.Y.); *In re Sterling Financial Corporation Securities Class Action*, Case No. CV 07-2171 (S.D.N.Y.); *Nelson, et al. v. Wal-Mart Stores, Inc.*, Case No. 04-CV-00171 (E.D. Ark.); *Montalvo v. Triplos, Inc. et al.*, Case No. 4:03CV995SNL (E.D. Mo.); *In re Fleming Corporation Securities Litigation*, No. 5-02-CV-178 (E.D. Tx.).

31. In addition to the chronological summary of work provided above, the following chart shows the number of hours that each of our firms spent, as of April 30, 2017, on each of fourteen categories of activities related to the action.

Billing Category	Lieff Cabraser Hours	Lodestar
Pre-Filing Investigation and Drafting Original Complaint	207.70	\$118,818.00

1	Consolidation of Actions & Consolidated Complaint	146.30	\$98,414.50
2			
3	Case Management	180.70	\$108,702.50
4			
5	Case Management Statements & Conferences	94.80	\$66,834.00
6			
7	Dispositive Motions (Motion to Dismiss and Summary Judgment)	417.30	\$241,181.00
8			
9	Written Discovery	721.20	\$421,219.00
10			
11	Document Review	645.40	\$311,176.50
12			
13	Experts and Source Code Review and Analysis	605.20	\$351,914.00
14			
15	Depositions	907.60	\$543,920.00
16			
17	Discovery Motions and Meet and Confers	1,086.40	\$672,208.00
18			
19	Class Certification Motion	1,045.70	\$666,078.00
20			
21	Second Amended Complaint	42.20	\$29,879.50
22			
23	Mediation & Settlement	342.40	\$232,211.50
24			
25	Post-Settlement Motions and Related Actions	25.30	\$15,372.00
26	TOTAL	6,468.20	\$3,877,928.50

Billing Category	Carney Bates & Pulliam Hours	Lodestar
Pre-Filing Investigation and Drafting Original Complaint	206.90	\$112,965.50
Consolidation of Actions & Consolidated Complaint	203.40	\$108,068.50
Case Management	120	\$78,946.00
Case Management Statements & Conferences	53.50	\$38,598.50
Dispositive Motions (Motion to Dismiss and Summary Judgment)	382.80	\$196,701.00
Written Discovery	491.50	\$265,065.50
Document Review	255.20	\$117,345.00
Experts and Source Code Review and Analysis	209.30	\$114,090.00
Depositions	840.60	\$502,462.00
Discovery Motions and Meet and Confers	674.00	\$348,702.50
Class Certification Motion	687.20	\$369,274.00
Second Amended Complaint	13.30	\$6,673.50
Mediation & Settlement	485.80	\$321,720.00
Post-Settlement Motions and Related Actions	81.80	\$51,232.50

TOTAL	4,705.30	\$2,631,844.50
Billing Category	Class Counsel Combined Hours	Class Counsel Combined Lodestar
Pre-Filing Investigation and Drafting Original Complaint	414.60	\$231,783.50
Consolidation of Actions & Consolidated Complaint	349.70	\$206,483.00
Case Management	300.70	\$187,648.50
Case Management Statements & Conferences	148.30	\$105,432.50
Dispositive Motions (Motion to Dismiss and Summary Judgment)	800.10	\$437,882.00
Written Discovery	1,212.70	\$686,284.50
Document Review	900.60	\$428,521.50
Experts and Source Code Review and Analysis	814.50	\$466,004.00
Depositions	1,748.20	\$1,046,382.00
Discovery Motions and Meet and Confers	1,760.40	\$1,020,910.50
Class Certification Motion	1,732.90	\$1,035,352.00
Second Amended Complaint	55.50	\$36,553.00

Mediation & Settlement	828.20	\$553,931.50
Post-Settlement Motions and Related Actions	107.10	\$66,604.50
TOTAL	11,173.50	\$6,509,773.00

32. Based on our experience with other class actions and complex cases, we believe that the time expended in connection with this matter was necessary to ensure the success of the action and reasonable in amount, particularly given the result achieved for the Settlement Class members and the complexity and challenges of the litigation.

33. The hourly rates utilized in the lodestar calculation include no risk multiplier. This Action involves novel issues predicated on claims involving the ECPA's and CIPA's application to electronic messages. The caselaw in this context is not fully developed, which resulted in the parties advancing conflicting interpretations of certain elements of Plaintiffs' ECPA and CIPA claims during the litigation, including the definition of message "content," the extent to which an interception of an electronic message occurs "in transit," the contours of the affirmative defense of implied consent, and the extent to which an "ordinary course of business" defense applies to an electronic communications service provider's acquisition and/or use of message content. Moreover, these novel legal issues were disputed in a highly technical context that required our firms and our retained experts to review extensive source code and technical documents. These issues, and other difficult issues implicated by these claims, required our firms to research and devise litigation strategies to move the case through class certification towards trial, without the certainty of ever receiving compensation.

II. Costs Incurred By Plaintiffs' Counsel

34. At the inception of the litigation, we agreed to establish a common cost fund to be used to pay necessary common expenses, primarily expert and consultant expenses, incurred on

1 behalf of Plaintiffs in this litigation. The common cost fund is, and at all times has been,
 2 maintained by LCHB, and has been funded by our respective firms through periodic assessments.

3 35. LCHB has contributed \$196,276.00 to the common cost fund since its inception,
 4 and CBP has contributed \$210,207.00 to the common cost fund since its inception, for a total
 5 contribution of \$406,483.00. In all, a total of \$396,619.19 in necessary common costs have been
 6 paid from the common cost fund.⁵ The costs paid from the cost fund are categorized as follows:

Expense Description	Expense Amount
Experts and Code Review	\$338,055.09
Court Reporters and Related Deposition Costs	\$52,322.43
E-Discovery Consultants	\$6,241.67
TOTAL	\$396,619.19

15
 16 36. In addition to our respective cost fund contributions, our respective firms have
 17 incurred other necessary expenses in prosecuting this matter. Attached hereto as **Exhibit 2** is a
 18 summary of expenses incurred in the prosecution of this matter, including travel for depositions
 19 and hearings, legal research, postage, and other customary litigation expenses. As detailed in this
 20 exhibit, LCHB's expenses incurred in the prosecution of this matter total \$374,757.71, inclusive
 21 of cost fund contributions; and CBP's expenses incurred in the prosecution of this matter total
 22 \$288,801.41, inclusive of cost fund contributions. After deduction of the \$9,863.81 not expended
 23 from the cost fund on this action, total unreimbursed expenses are \$653,695.31.

24 37. The foregoing expenses were incurred solely in connection with this litigation and
 25 are reflected in our respective books and records as maintained in the ordinary course of business.

26
 27
 28 ⁵ Of the total \$406,483.00 contributed to the common cost fund, \$9,863.81 has not been spent in this case.

III. Time and Effort by Plaintiffs

38. In addition to the time and costs we incurred in this action, the two Class Representatives have spent considerable time and effort in their pursuit of this litigation and in seeking to advance the legal rights and interests of the Settlement Class, including time spent discussing this litigation with Plaintiffs' counsel, time spent reviewing and responding to discovery requests, time spent preparing for their depositions and being deposed, and time spent communicating with Class Counsel counsel in the context of settlement negotiations.

39. Each Class Representative has prepared a declaration detailing the time and efforts he has spent in pursuit of this litigation. The declaration of Matthew Campbell is attached hereto as Exhibit 3 and the declaration of Michael Hurley is attached hereto as Exhibit 4.

QUALIFICATIONS

Lieff Cabraser Heimann & Bernstein, LLP

40. LCHB's qualifications were previously detailed at ECF No. 138-1 (filed in support of Plaintiff's Motion for Class Certification and appointment of LCHB as Class Counsel), which filing is incorporated by reference herein. As set forth therein, LCHB is one of the most respected and most successful class action firms in the country, and has recovered billions of dollars for class members. A copy of LCHB's current resume, which describes the firm's experience in class action and other complex litigation, can be found at <http://www.lchbdocs.com/pdf/firm-resume.pdf>.

41. The primary LCHB attorneys working on this case were partners Michael W. Sobol, David Rudolph, Nicholas Diamand, and Rachel Geman, and associate Melissa Gardner.

42. Michael W. Sobol is a 1989 graduate of Boston University School of Law. Mr. Sobol 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, Mr. Sobol 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, Mr. Sobol has represented plaintiffs in consumer protection class actions and other class actions and complex matters. He has been a partner with LCHB since 1999, and is currently in his fifteenth year as head of LCHB's consumer

1 practice group. Mr. Sobol has served as plaintiffs' class counsel in numerous nationwide class
 2 action cases. Mr. Sobol's qualifications are detailed at pages 6-9 of the Joint Declaration of Class
 3 Counsel in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement.
 4 (Dkt. 227-2).

5 43. Nicholas Diamand graduated from Columbia University of Law in 2002, with an
 6 LLM degree as a Stone Scholar. He thereafter clerked for then-Chief Judge Edward R. Korman,
 7 of the U.S District Court, Eastern District of New York. He joined LCHB in 2003 where he was
 8 an associate until 2006. He was a partner from 2007 until July 2008 and has been a partner since
 9 2013. In the intervening period, he was Of Counsel at LCHB. During his time at LCHB, Mr.
 10 Diamand's practice has been focused on consumer, securities fraud, and privacy litigation.

11 44. David Rudolph graduated from University of California at Berkeley, Boalt Hall
 12 School of Law in 2004. From 2007 to 2008 he was a law clerk for the Honorable Sandra Brown
 13 Armstrong, United States District Court for the Northern District of California. Prior to joining
 14 LCHB, Mr. Rudolph worked as an associate at Quinn Emmanuel. Since joining LCHB, Mr.
 15 Rudolph has become a partner in the San Francisco office. He has litigated numerous intellectual
 16 property cases in diverse technology areas, including internet services, storage visualization,
 17 semiconductor design, and handheld mobile devices. Mr. Rudolph has additionally represented
 18 several plaintiffs and defendants in copyright infringement and trade secret matters.

19 45. Rachel Geman graduated from Colombia University of Law in 1997. She then
 20 clerked for Judge Constance Baker Motley, United States District Court for the Southern District
 21 of New York from 1997 to 1998. Ms. German is now a partner in the LCHB New York office and
 22 focuses her work on employment law, consumer protection, and False Claims Act litigation. Her
 23 recent clients consist of whistleblowers in the banking, pharma, and healthcare industries;
 24 consumers in mortgage and short-term health insurance class action matters; and municipalities in
 25 civil rights litigation. She has also previously worked as an adjunct professor at New York Law
 26 School.

27 46. Melissa Gardner graduated in 2011 from Harvard Law School. After graduating,
 28 she worked as a law clerk for South Brooklyn Legal Services and at the law firm Emery Celli

1 Brinckerhoff & Abady in New York. Since joining LCHB as an associate in 2012, Ms. Gardner
 2 has represented plaintiffs in consumer protection, digital privacy, and mass tort litigation.

3 **Carney Bates & Pulliam, PLLC**

4 47. CBP's qualifications were previously detailed at ECF No. 138-1 (filed in support
 5 of Plaintiff's Motion for Class Certification and appointment of CBP as Class Counsel), which
 6 filing is incorporated by reference herein. As set forth therein, CBP is a national law firm based in
 7 Little Rock, Arkansas, and is recognized as one of the country's premiere firms in the areas of
 8 consumer protection class actions, data privacy/security, securities fraud, environmental law and
 9 employment discrimination. A copy of CBP's current resume, which describes the firm's
 10 experience in class action and other complex litigation, can be found at
 11 <http://www.cbplaw.com/firm-resume/>.

12 48. The primary CBP attorneys working on this case were partners Hank Bates and
 13 Allen Carney and associate David Slade. In addition, partner Tiffany Wyatt Oldham, associate
 14 Justin Craig and former associate Mitch Rouse performed discrete tasks.

15 49. Hank Bates is a partner at CBP with 25 years of litigation experience. He joined
 16 CBP in 2004, and since that time has focused his practice on representing consumers, farmers,
 17 shareholders, small businesses and governmental entities in class actions and complex litigation
 18 involving primarily consumer fraud, computer privacy, environmental law and employment
 19 rights. He received his B.A. from Harvard College in 1987 and his J.D. from Vanderbilt
 20 University School of Law in 1992. Following law school, he was a law clerk for the Honorable
 21 Danny J. Boggs, United State Court of Appeals for the Sixth Circuit. He practiced public-interest
 22 environmental law in San Francisco, California from 1993 to 1997, first with the law firm of
 23 Shute, Mihaly & Weinberger and then with Earthjustice, before returning to his home state of
 24 Arkansas. Mr. Bates's qualifications are detailed at pages 10-13 of Joint Declaration of Class
 25 Counsel in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement.
 26 (Dkt. 227-2).

27 50. Allen Carney is a partner at CBP with over 20 years of litigation experience. He
 28 concentrates his practice on prosecuting complex litigation on behalf of investors, consumers and

1 employees. Mr. Carney played a key role in litigating the various Payment Protection actions
2 against the largest credit card issuers, which actions resulted in significant recoveries for injured
3 consumers. Prior to joining CBP, Mr. Carney was a partner with Jack, Lyon & Jones, P.A. in the
4 Little Rock, Arkansas office, where he practiced extensively in the areas of complex commercial
5 litigation, labor and employment litigation, and business transactions. Mr. Carney received his
6 B.S.B.A. undergraduate degree from the University of Arkansas at Fayetteville in 1991 and his
7 J.D. from the University of Arkansas at Little Rock in 1994.

8 51. Tiffany Wyatt Oldham is a partner at CBP with 16 years of litigation experience.
9 She received her B.A. from the University of Arkansas at Fayetteville in 1998 and her J.D. from
10 the University of Arkansas at Fayetteville in 2001. Prior to joining CBP, Ms Oldham worked as
11 an intern for the United States Bankruptcy Court, Western Division of Arkansas where she
12 researched bankruptcy issues and assisted in administrating bankruptcy proceedings. Since
13 joining CBP in 2002, Ms. Oldham has focused her practice on securities and consumer fraud class
14 action, and she has gained experience with the full range of litigation issues confronting investors
15 and consumers in complex litigation.

16 52. David Slade is an associate at CBP with 4 years of litigation experience. He
17 received his B.A. from Yale University in 2001 and his J.D. from the University of Arkansas at
18 Little Rock in 2013. At CBP, Mr. Slade's focus is on consumer protection, specifically in the
19 areas of data privacy and data security. He has also organized cyber safety training for Arkansas
20 law enforcement and victim assistance professionals in conjunction with the National
21 Organization of Victim Assistance. Additionally, Mr. Slade is a member of the Volunteers
22 Organization, Center for Arkansas Legal Services, an organization committed to pro bono
23 advocacy.

24 53. Justin Craig is an associate with 3 years of litigation experience. He received his
25 B.A. from the University of Central Florida in 2010 and his J.D. from the University of Arkansas
26 at Little Rock in 2014. Mr. Craig founded his own law firm, and as a solo practitioner, focused on
27 serving populations that are historically underserved through providing family law, estate
28

1 planning, and expungement services. Since joining CBP in 2015, Mr. Craig has focused his work
2 on consumer protection.

3 54. Mitch Rouse is a former associate of CBP. Mr. Rouse earned his J.D. from the
4 University of Arkansas at Little Rock William H. Bowen School of Law in 2014. While in law
5 school, he was selected by the Law Review Editorial Board to serve as the Editor-in-Chief of
6 the UALR Law Review. Following law school, Mr. Rouse clerked for the Honorable D.P.
7 Marshall Jr., United States District Judge for the Eastern District of Arkansas.

8 55. Rebecca Kaufman is a former associate of CBP. Ms. Kaufman graduated from the
9 University of Arkansas-Little Rock Bowen School of Law in 2011. While in law school, Ms.
10 Kaufman simultaneously pursued a Masters of Public Service Degree at the Clinton School of
11 Public Service. Ms. Kaufman also holds a Bachelor of Arts degree from the University of
12 Mississippi.

13
14 I declare under penalty of perjury that the foregoing is true and correct. Executed this
15 26th day of May, 2017 in San Francisco, California.

16
17 /s/ Michael W. Sobol
Michael W. Sobol

18
19 I declare under penalty of perjury that the foregoing is true and correct. Executed this
20 26th day of May, 2017 in Little Rock, Arkansas.

21
22 /s/ Hank Bates
Hank Bates

EXHIBIT 1

Lodestar Summary for Class Counsel for the Settlement Class*Matthew Campbell and Michael Hurley, et al., v. Facebook, Inc.*

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

Timekeeper Status

(P) = Partner

(OC) = Of Counsel

(A) = Associate

(C) = Contract Attorney

(PL) = Paralegal

(R) = Research/Litigation Support

Lieff Cabraser Heimann & Bernstein, LLP			
Timekeeper	Hours	Rate	Lodestar
Sobol, Michael (P)	1092.7	\$900	\$983,430.00
Geman, Rachel (P)	40.4	\$700	\$28,280.00
Diamand, Nicholas (P)	451	\$650	\$293,150.00
Diamand, Nicholas (OC)	47.4	\$550	\$26,070.00
Rudolph, David (P)	1155.4	\$625	\$722,125.00
Rudolph, David (OC)	1334.4	\$575	\$767,280.00
Gardner, Melissa (A)	1605.3	\$455	\$730,411.50
Cronin-Wilson, Seth (C)	405	\$515	\$208,575.00
Anthony, Richard (R)	4.1	\$345	\$1,414.50
Ashlynn, Willow (R)	3.9	\$360	\$1,404.00
Belushko-Barrows, Nikki (R)	12.8	\$345	\$4,416.00
Grant, Anthony (R)	33.0	\$375	\$12,375.00
Mukherji, Renee (R)	7.6	\$375	\$2,850.00
Calangian, Margie (R)	31.5	\$375	\$11,812.50
Ocampo, Erwin (PL)	14.2	\$360	\$5,112.00
Chan, Christian (PL)	9.1	\$350	\$3,185.00
Carnam, Todd (PL)	191.9	\$345	\$66,205.50
Rudnick, Jennifer (PL)	28.5	\$345	\$9,832.50
LCHB TOTAL	6,468.2		\$3,877,928.50

Carney Bates & Pulliam, PLLC			
Timekeeper	Hours	Rate	Lodestar
Bates, Hank (P)	1,296.80	\$750	\$979,125.00
Carney, Allen (P)	852.00	\$750	\$639,000.00
Oldham, Tiffany (P)	34.70	\$575	\$19,952.50
Craig, Justin (A)	92.60	\$375	\$34,725.00
Kaufman, Rebecca (A)	18.20	\$375	\$6,825.00
Rouse, Mitch (A)	6.40	\$375	\$2,400.00
Slade, David (A)	2,404.60	\$395	\$949,817.00
CBP TOTAL	4,705.30		\$2,631,844.50

Grand Total for Class Counsel for the Settlement Class		
	Hours	Lodestar
Attorney Grand Total	10,836.9	\$6,391,166.00
Non-Attorney Grand Total	336.6	\$118,607.00
GRAND TOTAL	11,173.5	\$6,509,773.00

EXHIBIT 2

Expense Summary for Class Counsel for the Settlement Class*Matthew Campbell and Michael Hurley, et al., v. Facebook, Inc.*

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

EXPENSE CATEGORY	CBP, PLLC	LCHB, LLP	Total
Travel (airfare, transportation, lodging & meals)	\$67,906.71	\$17,373.71	\$85,280.42
Long distance/ Facsimile/Teleconference	\$1,075.80	\$4,441.48	\$5,517.28
Postage/Express Delivery/Messenger	\$560.49	\$3,675.65	\$4,236.14
Commercial Copies		\$89.00	\$89.00
Internal Reproduction Copies	\$762.44	\$19,318.60	\$20,081.04
Experts/Consultants		\$90,398.11	\$90,398.11
Court Fees	\$481.00	\$825.39	\$1,306.39
Court Reporters/Transcripts		\$11,223.60	\$11,223.60
Witness/Service Fees	\$75.00	\$279.00	\$354.00
Electronic Database		\$4,350.00	\$4,350.00
Computer Research/PACER	\$7,732.97	\$9,414.67	\$17,147.64
Mediation Expenses		\$16,787.50	\$16,787.50
Other Charges		\$305.00	\$305.00
Common Cost Fund Contributions	\$210,207.00	\$196,276.00	\$406,483.00
<i>Funds Not Expended from Common Cost Fund</i>			(\$9,863.81)
TOTAL EXPENSES	\$288,801.41	\$374,757.71	\$653,695.31

EXHIBIT 3

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 7th 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.
27
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Case No. 4:13-cv-05996-PJH

**DECLARATION OF MATTHEW
CAMPBELL IN SUPPORT OF
PLAINTIFFS' MOTION FOR AN AWARD
OF ATTORNEYS' FEES AND COSTS AND
SERVICE AWARDS**

Date: August 9, 2017

Time: 9:00 a.m

Judge: Hon. Phyllis J. Hamilton

Place: Courtroom 3, 3rd Floor

1 I, Matthew Campbell, declare as follows:

2 1. I am one of the Named Plaintiffs in this case.

3 2. I submit this declaration in support of Plaintiffs' Motion for an Award of
4 Attorneys' Fees and Costs and Service Awards. I have personal knowledge of the facts stated
5 herein. If called to testify to the contents of this declaration, I could and would competently do
6 so.

7 3. After initiating this lawsuit, I actively participated in this litigation, including
8 through discussions with my attorneys about the litigation about the litigation's progress and
9 significant milestones, the multiple mediations, and the ultimate settlement of the lawsuit.

10 4. I provided information for and reviewed the Complaint in which I am a named
11 Plaintiff filed on December 30, 2013, the Consolidated Amended Complaint filed on April 25,
12 2014, and the Second Amended Complaint filed on June 7, 2016.

13 5. I also provided information and documents to my attorneys for purposes of
14 responding to Defendant's discovery requests—totaling 17 Interrogatories, four Requests for
15 Admission, and 30 Requests for Production. The documents I searched for, gathered, reviewed
16 and produced in the course of responding to Defendant's Requests for Production were culled
17 from, *inter alia*, all of the Private Messages in my personal Facebook account and my
18 professional Facebook account, from which almost 1,000 responsive Private Messages were
19 produced.

20 6. On May 19, 2015, I was deposed by Counsel for Defendant from 9:04 am until
21 4:58 pm, inclusive of breaks. I travelled from Little Rock, Arkansas to San Francisco, California
22 to attend this deposition. In preparation for this deposition I met with Class Counsel both
23 telephonically and in-person.

24 7. Throughout the litigation, I had numerous telephonic, email, and in-person
25 meetings with Class Counsel. They routinely kept me advised as to the status of the case and
26 responded to any questions I had.

27 8. I also stayed up to date on and informed of case developments by reviewing and
28 discussing with Class Counsel the major filings and events in the case.

1 9. I was in regular communication with Class Counsel during each mediation, and I
2 reviewed and approved the Settlement that is presented for the Court's approval.

3 10. In total, since this litigation began approximately 45 months ago, I estimate that I
4 have spent 60 hours on this litigation.

5 11. I have never been promised any compensation for performing my duties as a
6 plaintiff and class representative. I understand, however, that the parties have requested that the
7 Court award me \$5,000 for my time and efforts on behalf of the Settlement Class. I will be most
8 appreciative if the Court determines that my efforts on behalf of the Settlement Class in
9 commencing and assisting with the prosecution of this action warrant an award in that amount.

10 I declare under penalty of perjury that the foregoing is true and correct. Executed this
11 24 th day of May, 2017, in LITTLE ROCK, ARKANSAS

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13 By: _____

14 Matthew Campbell
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EXHIBIT 4

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

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14 David Slade
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15 CARNEY BATES & PULLIAM, PLLC
519 West 7th Street
16 Little Rock, AR 72201
Telephone: 501.312.8500
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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.
27
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Case No. 4:13-cv-05996-PJH

**DECLARATION OF MICHAEL HURLEY
IN SUPPORT OF PLAINTIFFS' MOTION
FOR AN AWARD OF ATTORNEYS' FEES
AND COSTS AND SERVICE AWARDS**

Date: August 9, 2017

Time: 9:00 a.m

Judge: Hon. Phyllis J. Hamilton

Place: Courtroom 3, 3rd Floor

1 I, Michael Hurley, declare as follows:

2 1. I am one of the Named Plaintiffs in this case.

3 2. I submit this declaration in support of Plaintiffs' Motion for an Award of
4 Attorneys' Fees and Costs and Service Awards. I have personal knowledge of the facts stated
5 herein. If called to testify to the contents of this declaration, I could and would competently do
6 so.

7 3. After initiating this lawsuit, I actively participated in this litigation, including
8 through discussions with my attorneys about the litigation about the litigation's progress and
9 significant milestones, the multiple mediations, and the ultimate settlement of the lawsuit.

10 4. I provided information for and reviewed the Complaint in which I am a named
11 Plaintiff filed on December 30, 2013, the Consolidated Amended Complaint filed on April 25,
12 2014, and the Second Amended Complaint filed on June 7, 2016.

13 5. I also provided information and documents to my attorneys for purposes of
14 responding to Defendant's discovery requests—totaling 15 Interrogatories, four Requests for
15 Admission, and 30 Requests for Production. The documents I searched for, gathered, reviewed
16 and produced in the course of responding to Defendant's Requests for Production were culled
17 from, *inter alia*, all of the Private Messages in my personal Facebook account, from which 17
18 responsive Private Messages were produced.

19 6. On July 9, 2015, I was deposed by Counsel for Defendant from 9:01 am until 3:42
20 pm, inclusive of breaks. I travelled from North Plains, Oregon to San Francisco, California to
21 attend this deposition. In preparation for this deposition I met with Class Counsel both
22 telephonically and in-person.

23 7. Throughout the litigation, I had numerous telephonic, email, and in-person
24 meetings with Class Counsel. They routinely kept me advised as to the status of the case and
25 responded to any questions I had.

26 8. I also stayed up to date on and informed of case developments by reviewing and
27 discussing with Class Counsel the major filings and events in the case.
28

1 9. I was in regular communication with Class Counsel during each mediation, and I
2 reviewed and approved the Settlement that is presented for the Court's approval.

3 10. In total, since this litigation began approximately 45 months ago, I estimate that I
4 have spent 60 hours on this litigation.

5 11. I have never been promised any compensation for performing my duties as a
6 plaintiff and class representative. I understand, however, that the parties have requested that the
7 Court award me \$5,000 for my time and efforts on behalf of the Settlement Class. I will be most
8 appreciative if the Court determines that my efforts on behalf of the Settlement Class in
9 commencing and assisting with the prosecution of this action warrant an award in that amount.

10 I declare under penalty of perjury that the foregoing is true and correct. Executed this
11 25 th day of May, 2017, in North Plains, Oregon

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13 By: Michael Hurley
14 Michael Hurley
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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

Plaintiffs,

v.

FACEBOOK, INC.,

Defendant.

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

**[PROPOSED] ORDER GRANTING
PLAINTIFFS' UNOPPOSED MOTION
FOR AN AWARD OF ATTORNEYS' FEES
AND COSTS AND SERVICE AWARDS**

1 Having reviewed the Plaintiffs' Unopposed Motion for an Award of Attorneys' Fees and
 2 Costs and Service Awards and the documents submitted in support thereof, the Court now
 3 FINDS, CONCLUDES, and ORDERS as follows:

4 1. Plaintiffs, on behalf of themselves and those similarly situated, commenced this
 5 action (the "Action") on December 30, 2013. In their initial complaint, Plaintiffs asserted claims
 6 for violations of the Electronic Communications Privacy Act, 18 U.S.C. §§ 2510 *et seq.*
 7 ("ECPA"); the California Invasion of Privacy Act, Cal. Penal Code §§ 630 *et seq.* ("CIPA"); and
 8 California's Unfair Competition Law California Business and Profession Code §§ 17200 *et seq.*
 9 ("UCL"). Therein, Plaintiffs alleged that Facebook, as a routine policy and business practice,
 10 captured and reads its users' personal, private Facebook messages without their consent for
 11 purposes including, but not limited to, data mining and user profiling, generating "Likes" for web
 12 pages, and targeted advertising. (Dkt. 1).

13 2. On April 15, 2014, the Court entered an order granting Plaintiffs' motion to
 14 consolidate this Action with a related action filed by Plaintiff David Shadpour, *Shadpour v.*
 15 *Facebook, Inc.*, Case No. 5:14-cv-00307-PSG (N.D. Cal.). (*See* Dkt. 24). Subsequently, Plaintiffs
 16 filed a Consolidated Amended Complaint on April 25, 2014, asserting ECPA, CIPA, and UCL
 17 claims on behalf of themselves and a proposed class of "[a]ll natural-person Facebook users
 18 located within the United States who have sent or received private messages that included URLs
 19 in their content, from within two years before the filing of this action up through and including
 20 the date when Facebook ceased its practice." (*See* Dkt. 25).¹

21 3. On June 17, 2014, Facebook filed a Motion to Dismiss Plaintiffs' Consolidated
 22 Amended Complaint. (*See* Dkt. 29). Plaintiffs filed an opposition (*see* Dkt. 31), and Facebook, in
 23 turn, filed a reply brief (*see* Dkt. 35). On December 23, 2014, the Court issued an order granting
 24 in part and denying in part Facebook's Motion to Dismiss Plaintiffs' Consolidated Amended
 25 Complaint, dismissing the claims under CIPA § 632 and the UCL, but denying dismissal of the
 26 claims under ECPA and CIPA § 631. (*See* Dkt. 43).

27
 28 ¹ On October 2, 2015, David Shadpour voluntarily dismissed his claims, with prejudice, pursuant
 to Federal Rule of Civil Procedure 41(a). (*See* Dkt. 123.)

4. 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 a damages class under Federal Rule of Civil Procedure 23(b)(3), but granting certification of an injunctive-relief class under Federal Rule of Civil Procedure 23(b)(2). (*See* Dkt. 192). The class definition was as follows:

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.

(*See Id.*).

5. Specifically, the Court certified for class treatment three specific alleged uses by Facebook of URLs included in private messages: (1) Facebook's cataloging URLs shared in private messages and counting them as a "Like" on the relevant third-party website, (2) Facebook's use of data regarding URLs shared in private messages to generate recommendations for Facebook users, and (3) Facebook's sharing of data regarding URLs in messages (and attendant demographic data about the messages' participants) with third parties. (Dkt. 192, at pp. 3-5). In addition, the Court directed the Plaintiffs to file a Second Amended Complaint "(1) revising the class definition to reflect the definition set forth in the class certification motion, and (2) adding allegations regarding the sharing of data with third parties." (*Id.* at p.6). In accord therewith, the Plaintiffs filed their Second Amended Complaint on June 7, 2016. (Dkt. 196).

6. On December 7, 2016, the parties engaged in a fourth mediation before Randall Wulff. As a result of this final effort, the parties were able to reach an agreement-in-principle to resolve this Action at the December 7, 2016 mediation, and on December 23, 2016, the parties filed a Joint Status Report, advising the Court that they had reached a settlement-in-principle. (*See* Dkt. 222). Thereafter, the parties memorialized the terms of the settlement, first in a Memorandum of Understanding executed on February 9, 2017, and subsequently in the Settlement Agreement executed and filed with this Court on March 1, 2017 (Dkt. 227-3), which acknowledges the relief afforded to the Class (*Id.* At ¶ 40) as well as the role of Class Counsel in

1 obtaining such relief (*Id.*). In the Settlement Agreement, Facebook agreed to take no position on
2 an award of attorneys' fees and costs of up to \$3,890,000. At that time, Class Counsel
3 approximated that they would seek \$3,230,000 in fees – a significant reduction from the lodestar
4 accrued to that date – and \$660,000 in costs; however, it was agreed Class Counsel may apply in
5 different amounts not to exceed \$3,890,000. Prior to that agreement, Class Counsel provided
6 Facebook with the monthly time summaries of Class Counsel's lodestar to facilitate negotiation
7 and resolution of the fee issue.

8 7. On April 26, 2017, this Court granted preliminary approval to the parties'
9 settlement and ordered that Class Counsel file an application for attorneys' fees on or before May
10 26, 2017. (Dkt. 235 at ¶ 14).

11 8. Plaintiffs have now filed their Unopposed Motion for an Award of Attorneys' Fees
12 and Costs and Service Awards ("Fee Motion"), supported by the joint declaration of Class
13 Counsel Michael Sobol and Hank Bates ("Joint Declaration"), which attaches as exhibits
14 summaries of Class Counsel's hours billed, hourly rates, and costs incurred, as well as
15 declarations from each Class Representative attesting to their respective participation in this
16 Action. The Court addresses, in turn, the appropriateness of the attorneys' fees, costs, and service
17 awards sought.

18 9. Even where a settlement agreement provides for fees and a defendant commits to
19 take no position on them, in the class action context, a court must still ensure that the attorneys'
20 fees and costs awarded are "fundamentally fair, adequate, and reasonable." *See Staton v. Boeing,*
21 *Co.*, 327 F. 3d 938, 963-64 (9th Cir. 2003).

22 10. In assessing the reasonableness of an attorney's hourly rate, courts consider
23 whether the claimed rate is "in line with those prevailing in the community for similar services by
24 lawyers of reasonably comparable skill, experience and reputation." *Blum v. Stenson*, 465 U.S.
25 886, 895-96 n.11 (1984). The Fee Motion and accompanying Joint Declaration establish the
26 experience, credentials, and rates of Class Counsel, sufficient to warrant the rates sought. Fee
27 Motion at 13; Joint Decl. at ¶¶ 27-30, 40-55.

11. ECPA provides for an award of reasonable attorneys' fees and costs. *See* 18 U.S.C.S. §2520(b)(3) (providing appropriate relief includes "a reasonable attorney's fee and other litigation costs reasonably incurred."). Similarly, in light of the CIPA claim, the requested attorneys' fees are appropriate in this Action pursuant to California's "private attorney general" statute, which provides for an award of attorneys' fees to a "successful party." *See* Cal. Civ. Proc. Code § 1021.5.

12. The Joint Declaration of Class Counsel provides a detailed chronological summary of the work performed by Class Counsel, a spreadsheet showing the number of hours devoted by each firm to fourteen categories of activities, and spreadsheets setting forth the number of hours billed, the hourly rates, and the lodestar for each individual attorney and staff member who substantially contributed to the prosecution of this Action, arriving at a total lodestar of \$6,509,773.00. The amount Class Counsel requests in fees – \$3,236,304.69 – is just under half of that lodestar, or an overall 50% reduction from their full fees.

13. The Ninth Circuit recently reconfirmed that "[t]here is a strong presumption that the lodestar figure represents a reasonable fee." *Rodriguez v. West Publ. Corp.*, 602 Fed. Appx. 385, 387 (9th Cir. 2015). Further, courts within this District and its sister district have held that a significant negative multiplier—such as the 0.5 multiplier at issue here—"strongly suggests the reasonableness of the negotiated fee." *Rosado v. Ebay Inc.*, No. 5:12-CV-04005-EJD, 2016 U.S. Dist. LEXIS 80760, at *26 (N.D. Cal. June 21, 2016) (negative multiplier of 0.54); *See Gong-Chun v. Aetna*, No. 1:09-CV-01995-SKO, 2012 U.S. Dist. LEXIS 96828, at *53 (E.D. Cal. Jul. 12, 2012) (holding that a negative multiplier of 0.79 suggests that the negotiated fee award is reasonable); *Chun-Hoon v. Mckee Foods Corp.*, 716 F. Supp. 2d 848, 854 (N.D. Cal. 2010) (reasoning that a negative multiplier suggests a reasonable and fair valuation of the services provided by class counsel). In this case, the amount that Class Counsel agreed to accept is far less than their lodestar, making it fair, reasonable and adequate for the Class. Accordingly, the Court approves Class Counsel's request.

14. Class Counsel seeks \$653,695.31 in unreimbursed out-of-pocket costs incurred over the course of this litigation. The Settlement terms and well-settled precedent support Class

Counsel's entitlement to recovery of out-of-pocket costs reasonably incurred in investigating, prosecuting, and settling these claims. *See, e.g., In re Media Vision Tech. Sec. Litig.*, 913 F. Supp. 1362, 1366 (N.D. Cal. 1996). As detailed in the Joint Declaration, these costs were reasonably incurred in furtherance of the investigation, prosecution, and Settlement of the Action and should be reimbursed. Decl. at ¶¶ 34-37; *see In re Toys "R" Us-Del., Inc. Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 469 (C.D. Cal. 2014).

15. The Settlement also provides for service awards of \$5,000 to each Class Representative—respectively, to Matthew Campbell and Michael Hurley. *See Settlement Agreement*, ¶ 60. As the Ninth Circuit has recognized, “named plaintiffs, as opposed to designated class members who are not named plaintiffs, are eligible for reasonable incentive payments.” *Staton*, 327 F.3d at 977; *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 958 (9th Cir. 2009) (service awards “are fairly typical in class action cases”). Such awards are “intended to compensate class representatives for work done on behalf of the class [and] make up for financial or reputational risk undertaken in bringing the action.” *Id.*; *see also Van Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294, 299-300 (N.D. Cal. 1995).

16. In this District, service awards in the amount of \$5,000 per class representative are “presumptively reasonable.” *In re LinkedIn User Privacy Litig.*, 309 F.R.D. 573, 592 (N.D. Cal. 2015). In this case, the Class Representatives sat for day-long depositions, produced a significant amount of documents in discovery, answered numerous written discovery requests and invested substantial time over the past three years in collaborating and communicating with Class Counsel and monitoring the litigation. The Court finds that the service awards in this Action are well justified under the circumstances.

17. It is therefore ORDERED that Class Counsel be awarded \$3,890,000 in reasonable attorneys' fees and costs, and that Class Representatives Matthew Campbell and Michael Hurley will each receive \$5,000 service awards, in accordance with the Settlement Agreement.

1 IT IS SO ORDERED.

2
3 DATED: _____

4 HONORABLE PHYLLIS J. HAMILTON
5 UNITED STATES DISTRICT JUDGE
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