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E-Filed 03/17/2010

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

SEAN LANE, *et al.*,

Plaintiffs

v.

FACEBOOK, INC., *et al.*,

Defendants.

No. C 08-3845 RS

**FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER APPROVING
SETTLEMENT**

A hearing was held before this Court on February 26, 2010, pursuant to the Court's Preliminary Approval Order of October 23, 2009, upon a Settlement Agreement, dated as of September 17, 2009 (the "Settlement Agreement") in the above-captioned Litigation. Due notice of the hearing was given in accordance with the Preliminary Approval Order which was adequate and sufficient and in accordance with the Court's Preliminary Approval Order. The represented parties appeared by their attorneys of record, and an opportunity to be heard was given to all other persons desiring to be heard as provided in the notice. The Court has considered the terms of the proposed Settlement as set forth in the Settlement Agreement, and the submissions and arguments with respect to it. Accordingly, the Court makes following findings and orders thereon:

1 A. This Court has jurisdiction over the subject-matter of the Litigation pursuant to
2 Title 28, United States Code, section 1332, and all acts within the Litigation, and over all the
3 parties to the Litigation, and all members of the Settlement Class.

4 B. This Order incorporates herein and makes a part hereof the Settlement Agreement,
5 including the Exhibits thereto. Unless otherwise provided herein, the terms defined in the
6 Settlement Agreement shall have the same meanings for purposes of this Order.

7 C. Notice to the Settlement Class and other potentially interested parties has been
8 provided in accordance with the notice requirements specified by the Court in the Preliminary
9 Approval Order. Additionally, subsequent to preliminary approval, the parties proposed
10 amending the notice requirements to specify that Class members would be given notice by email
11 to the Class members' email addresses on file with Facebook, in lieu of an internal Facebook
12 message in the 'Updates' Section." The Court declined to execute the parties' stipulation, instead
13 inquiring if it would be more appropriate to utilize email notice in addition to that specified in the
14 Preliminary Approval Order, rather than in lieu of it. Although the Preliminary Approval Order
15 was never expressly amended to require it, notice was thereafter given by email in addition to the
16 other forms of notice. Such notice fully and accurately informed the Settlement Class Members
17 of all material elements of the proposed Settlement and of their opportunity to object to, comment
18 thereon, or exclude themselves from, the Settlement. It provided Settlement Class Members
19 adequate instructions and a variety of means to obtain additional information and represented the
20 best notice practicable under the circumstances. The notice was valid, due, and sufficient to all
21 Settlement Class Members and complied fully with the laws of the of State of California, the
22 Federal Rules of Civil Procedure, the United Sates Constitution, due process and other applicable
23 laws. Notice was given in a timely manner pursuant to the Order of this Court on Preliminary
24 Approval and provided adequate time for Class Members to comment and object. Further, this
25 Court finds that adequate notice was provided as required under the Class Action Fairness Act.

26 D. One individual objector submitted an objection complaining that the email notice
27 he was given was intercepted by his email program's "spam filter." The objector asserted that this
28 occurred despite the fact that he has received other email from Facebook that was not filtered.

1 Although it is not entirely clear how or why this may have occurred, the Court is satisfied that the
2 possibility that some Class members have activated settings on their email accounts that might
3 filter the email notices does not undermine the overall adequacy of the notice given. Indeed, even
4 the objector appears to have received actual notice via email, albeit only because he checked the
5 contents of his spam filter, which not all Class members may have done.

6 E. A full opportunity was afforded to the Settlement Class Members to participate in,
7 comment on, opt-out and/or object to the Settlement, notice and claims procedure. A list of those
8 members of the Settlement Class who timely opted-out of the Settlement and the Settlement Class
9 and who therefore are not bound by the Settlement, the provisions of the Settlement Agreement,
10 this Order and the Judgment to be entered by Clerk of Court, hereon, has been submitted by the
11 Claims Administrator and is attached hereto as Exhibit A and incorporated by reference herein.
12 All other members of the Settlement Class (as permanently certified below) shall be subject to all
13 of the provisions of this Order.

14 F. Federal Rule of Civil Procedure 23(a) lists four conjunctive criteria that must be
15 met to certify a class action: numerosity, commonality of issues, typicality of the representative
16 plaintiffs' claims, and adequacy of representation. A class may only be certified if the court is
17 "satisfied, after a rigorous analysis, that the prerequisites of Rule 23(a) have been satisfied."
18 *General Telephone Co. of Southwest v. Falcon*, 457 U.S. 147, 161, 102 S.Ct. 2364, 72 L.Ed.2d
19 740 (1982). Based on the record before the Court, including all submissions in support of the
20 Settlement Agreement, objections, comments and responses thereto, as well as the settlement set
21 forth in the Settlement Agreement, this Court finds that the applicable requirements of Federal
22 Rule of Civil Procedure 23 have been satisfied with respect to the Settlement Class and the
23 proposed Settlement. Specifically, this Court finds that, with regard to the proposed Settlement
24 Class, Rule 23(a) is satisfied in that:

25 1. The Settlement Class, as defined below, is so numerous that joinder of all
26 members is impracticable. The undisputed record indicates that there are over 3.6 million
27 members of the class.

28 2. There are questions of law and fact common to members of the Settlement

1 Class in that all the allegations and claims in this matter arise from the operation of Facebook's
2 Beacon program on third-party sites and its transmission of personal information to Facebook.

3 3. The representative Plaintiffs' claims are typical of the claims of members
4 of the Settlement Class. Collectively, the representative Plaintiffs' claims implicate each of the
5 defendants. More importantly, all of the named Plaintiffs' and Settlement Class Members' claims
6 arise from the operation of the Beacon program—a common course of conduct resulting in the
7 same or similar alleged injuries. *See In re Static Random Access Memory (SRAM) Antitrust Litig.*,
8 2009 WL 4263524 *4 (N.D. Cal.) (quoting *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th
9 Cir. 1992). Although some claims of some Settlement Class Members arise from statutes unique
10 to the third-party Beacon Merchants with whom they interacted, the more salient characteristic of
11 the Class is the Beacon nexus and the statutory claims, such as the Electronic Communications
12 Privacy Act (ECPA), common to all Class Members. These reasonably coextensive claims
13 support typicality more than any disparities in particular statutory damages militate against it. *See*
14 *Blackie v. Barrack*, 524 F.2d 891, 905 (9th Cir. 1975) (“[t]he amount of damages is invariably an
15 individual question and does not defeat class action treatment”); *see also In re SRAM Antitrust*
16 *Litig.*, 2009 WL 4263524 *4 (citing *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir.
17 1998); *compare* Video Privacy Protection Act, Title 18, United States Code, section
18 2710(c)(2)(A) (liquidated damages of \$2,500) *and* the ECPA Wiretap Act, Title 18, United States
19 Code, section 2520(c)(2)(B) (statutory damages of whichever is the greater of \$100 a day for each
20 day of violation or \$10,000)).

21 4. Settlement Class Counsel and class representatives have fairly and
22 adequately protected the interests of the Settlement Class. By Order dated October 23, 2009, this
23 Court, pursuant to Federal Rule of Civil Procedure 23(g), appointed Scott A. Kamber and David
24 A. Stampley of KamberLaw, LLC and Joseph H. Malley of the Law Office of Joseph H. Malley,
25 P.C., as Class Counsel for the Settlement Class, providing the Settlement Class with
26 representation by nationally recognized members of the class action bar and significant
27 experience in consumer privacy and technology matters. Counsel's efforts on behalf of the Class
28 to reach a settlement included protracted arms-length negotiations for over a year as well as

1 opposition to a motion to intervene. The attorneys of KamberLaw have made a showing that they
2 possess experience and expertise in the areas of consumer privacy and technology matters and
3 have professionally represented the interests of the Class in this matter.

4 G. Because certification is for settlement purposes only and not for litigation
5 purposes, the Court need not consider whether the case, if tried, would present intractable
6 manageability problems. Nonetheless, the Court finds that on the record presented that there
7 would not be intractable manageability problems and, in fact, the class would be manageable
8 given its unitary nature and the high likelihood of success in identifying Class Members.

9 With regard to the proposed Settlement Class, Rule 23(b)(3) is satisfied in that issues of
10 law and fact common to the Class predominate over those affecting individual Class Members
11 and that a class action is the superior method to adjudicate these claims.

12 H. The Court has held a hearing to consider the fairness, reasonableness and adequacy
13 of Settlement, has been advised of all objections to and comments regarding the Settlement, and
14 has given fair consideration to such objections and comments. The Court has reviewed the papers
15 submitted by the parties and by all persons objecting to and commenting on the Settlement and
16 has heard the arguments of those objectors to the Settlement appearing at the fairness hearing.

17 I. The Settlement, as provided for in the Settlement Agreement is fair, reasonable,
18 adequate and proper and in the best interests of the Settlement Class. In reaching this conclusion,
19 the Court has considered the record in its entirety, all objections and comments submitted to the
20 Court, and the arguments of counsel for the parties and all other persons seeking to comment on
21 the proposed Settlement.

22 The Court has considered a number of factors in its evaluation of the Settlement,
23 including: (1) the strength of the plaintiffs' case; (2) the risk, expense, complexity, and likely
24 duration of further litigation; (3) the risk of maintaining class action status throughout the trial;
25 (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the
26 proceedings; (6) the experience and views of counsel; (7) the presence of a governmental
27 participant; and (8) the reaction of the class members to the proposed settlement. *Molski v.*
28 *Gleich*, 318 F.3d 937, 953 (9th Cir. 2003); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th

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