FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MATTHEW CAMPBELL; MICHAEL HURLEY, on behalf of themselves and all others similarly situated, *Plaintiffs-Appellees,*	No. 17-16873
	D.C. No. 4:13-cv-05996-PJH
v.	
FACEBOOK, INC., *Defendant-Appellee,*	OPINION
v.	
ANNA W. ST. JOHN, *Objector-Appellant.*	

Appeal from the United States District Court
for the Northern District of California
Phyllis J. Hamilton, Chief Judge, Presiding

Argued and Submitted January 18, 2019
Submission Vacated June 4, 2019
Resubmitted March 3, 2020
San Francisco, California

Filed March 3, 2020

Before: J. Clifford Wallace, Richard R. Clifton,
and Michelle T. Friedland, Circuit Judges.

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Opinion by Judge Friedland

SUMMARY[*]

Objector / Class Action Settlement

In an appeal brought by an objecting class member, the panel affirmed the district court's approval of a settlement between Facebook and a nationwide class of its users who alleged that Facebook routinely used website links in users' private messages without their consent in violation of federal and California privacy laws.

Facebook acknowledged in the settlement agreement that it had already made several changes to the practices challenged in this action, and it agreed to add a disclosure to a Help Center page on its website for a year. The district court, over the objector's challenge, found the settlement to be fair and approved it; and granted in full class counsel's request for $3.89 million in fees and costs.

As a threshold matter, the panel held that the plaintiff class had Article III standing to bring the case. First, the panel held that the plaintiffs identified a concrete injury. Specifically, the panel concluded that the plaintiffs identified a concrete injury by claiming that Facebook violated the federal Electronic Communications Privacy Act and the California Invasion of Privacy Act when it intercepted, catalogued, and used without consent URLs that users had shared in private messages. Second, the panel held that the

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[*] This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

plaintiffs established standing to seek injunctive relief, and post-filing developments did not moot this case. The panel concluded that the district court had jurisdiction to approve the settlement, and the panel therefore had jurisdiction to review the merits of that decision.

The panel rejected the objector's challenges to the substantive fairness of the settlement. First, the panel rejected the argument that the settlement was invalid because the class received only "worthless injunctive relief." *Koby v. ARS National Services, Inc.*, 846 F.3d 1071, 1081 (9th Cir. 2017). The panel held that the district court did not clearly err in finding that the settlement's injunctive relief had value to absent class members. Moreover, the class did not need to receive much for the settlement to be fair because the class gave up very little. Second, the panel rejected the objector's argument that the settlement was invalid under *In re Bluetooth Headset Products Liability Litigation*, 654 F.3d 935 (9th Cir. 2010), because it prioritized class counsel's interests over those of their clients. The panel held that the district court looked at the *Bluetooth* warning signs of possible collusion between class counsel and Facebook, and the district court did not abuse its discretion in concluding that none of the warning signs weighed against approval of the settlement. The panel concluded that applying the *Bluetooth* framework did not demonstrate that the settlement in this case was unfair.

COUNSEL

Adam Ezra Schulman (argued), Anna St. John, and Theodore H. Frank, Center for Class Action Fairness, Washington, D.C.; for Objector-Appellant.

Hank Bates (argued), Allen Carney, and David Slade, Carney Bates & Pulliam PLLC, Little Rock, Arkansas; Michael W. Sobol, David T. Rudolph, and Melissa Gardner, Lieff Cabraser Heimann & Bernstein LLP, San Francisco, California; Rachel Geman and Nicholas Diamand, Lieff Cabraser Heimann & Bernstein LLP, New York, New York; for Plaintiffs-Appellees.

Christopher Chorba (argued), Joshua A. Jessen, Ashley M. Rogers, and Ryan S. Appleby, Gibson Dunn & Crutcher LLP, Los Angeles, California, for Defendant-Appellee.

Marc Rotenberg, Alan Butler, and Sam Lester, Electronic Privacy Information Center, Washington, D.C., for Amicus Curiae Electronic Privacy Information Center (EPIC).

OPINION

FRIEDLAND, Circuit Judge:

Objecting class member Anna St. John ("Objector") appeals from the district court's approval of a settlement between Facebook and a nationwide class of its users who alleged that Facebook routinely captured, read, and used for several purposes the website links included in users' private messages without their consent, and that these practices violated federal and California privacy laws. After years of litigation that included lengthy discovery, four mediation

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sessions, and Facebook's failed attempts to convince the district court to dismiss the case or deny class certification, the parties reached a settlement. Facebook acknowledged in the settlement agreement that it had already made several changes to the practices challenged in this action, and it agreed to add a disclosure to a Help Center page on its website for a year. The settlement agreement also provided that class counsel could apply for court approval of up to $3.89 million in attorney's fees and costs, and that Facebook would not take any position on that application. The district court, over Objector's challenge, found the settlement to be fair and approved it. The district court also granted in full class counsel's request for $3.89 million in fees and costs.

Addressing Objector's appeal from the district court's approval of the settlement, we first consider whether Plaintiffs had standing to bring this action and whether it later became moot. We conclude that the district court had jurisdiction, and, accordingly, that we have jurisdiction to evaluate the fairness of the settlement. Second, we reject on the merits Objector's contentions that the district court abused its discretion by approving the settlement.

I.

A.

"Facebook operates one of the largest social media platforms in the world, with over one billion active users. About seven in ten adults in the United States use Facebook." *Patel v. Facebook, Inc.*, 932 F.3d 1264, 1267 (9th Cir. 2019) (citations omitted), *cert. denied*, No. 19-706 (U.S. Jan. 21, 2020). Facebook has a messaging function on its platform that allows users to send electronic messages to one or more other users. Facebook explains on its website that these messages are "private" because their contents and

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