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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

IN RE FACEBOOK INTERNET
TRACKING LITIGATION

Case No. 5:12-MD-2314-EJD

**~~PROPOSED~~ ORDER CERTIFYING
SETTLEMENT CLASS; GRANTING
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT
PURSUANT TO FEDERAL RULE OF
CIVIL PROCEDURE 23(e)(1); AND
APPROVING FORM AND CONTENT
OF CLASS NOTICE**

THIS DOCUMENT RELATES TO
ALL ACTIONS

1 **WHEREAS**, Plaintiffs Perrin Davis, Dr. Brian Lentz, Michael Vickery, and Cynthia Quinn
2 (the “MDL Plaintiffs”), Plaintiffs in the related State Court Action *Ung, et al. v. Facebook, Inc.*,
3 No. 2012-1-CV-217244 (Cal. Super. Ct.) (“State Court Plaintiffs”) and Defendant Meta Platforms,
4 Inc., formerly Facebook, Inc. (“Meta” or “Defendant”) (collectively “Parties”), entered into a
5 Settlement Agreement¹ (ECF No. 233-1) on February 14, 2022, which, together with the exhibits
6 and appendices thereto, sets forth the terms and conditions for a proposed resolution of this
7 litigation and for its dismissal with prejudice;

8 **WHEREAS**, this Court has reviewed the Settlement entered into by the Parties, all exhibits
9 thereto, the record in this case, and the Parties’ arguments;

10 **WHEREAS**, this Court preliminarily finds, for the purpose of settlement only, that the
11 Settlement Class meets all the prerequisites of Federal Rule of Civil Procedure 23 for class
12 certification, including numerosity, commonality, typicality, predominance of common issues,
13 superiority, and that the Plaintiffs and Lead Counsel are adequate representatives of the Settlement
14 Class;

15 **GOOD CAUSE APPEARING, IT IS HEREBY ORDERED AS FOLLOWS:**

16 1. All terms and definitions used herein have the same meanings as set forth in the
17 Settlement Agreement.

18 **Preliminary Certification of Settlement Class for Purpose of Settlement Only**

19 2. The Settlement is hereby preliminarily approved as fair, reasonable, and adequate
20 such that notice thereof should be given to members of the Settlement Class. Under Federal Rule
21 of Civil Procedure 23(b)(3), the Settlement Class, as set forth in paragraphs 1.39 and 2.1 of the
22 Settlement Agreement and defined as follows, is preliminarily certified for the purpose of
23 settlement only:

24 All persons who, between April 22, 2010 and September 26, 2011,
25 inclusive, were Facebook Users in the United States that visited non-
26 Facebook websites that displayed the Facebook Like button.

27 _____
28 ¹ All capitalized terms not defined herein have the same meaning as in the Settlement Agreement, which is provided as Exhibit 1 to the Named Plaintiffs’ Motion for Preliminary Approval.

1 The Settlement Class excludes Meta and any and all of its current and former predecessors,
2 successors, assigns, parents, subsidiaries, affiliates, directors, officers, employees, agents,
3 representatives, and attorneys, and any and all of the parents', subsidiaries', and affiliates' current
4 and former predecessors, successors, assigns, directors, officers, employees, agents,
5 representatives, and attorneys. The Settlement Class also excludes counsel for any Party in any of
6 the Actions and any judicial officer presiding over the Actions, or any member of his or her
7 immediate family or of his or her judicial staff. The Settlement Class also excludes members who
8 timely exercised their right to exclude themselves pursuant to the procedures described in the
9 Notice and/or in Section 8 of the Settlement Agreement. The Settlement Class also excludes the
10 Settlement Administrator and any and all of its predecessors, successors, assigns, parents,
11 subsidiaries, affiliates, directors, officers, employees, agents, representatives, and attorneys, and
12 any and all of the parents', subsidiaries', and affiliates' present and former predecessors,
13 successors, assigns, directors, officers, employees, agents, representatives, and attorneys. The Class
14 also excludes Class Counsel, counsel for any plaintiff in any consolidated or related action listed in
15 Exhibit A to the Settlement Agreement, and any and all of their predecessors, successors, assigns,
16 parents, subsidiaries, affiliates, directors, officers, employees, agents, representatives, and
17 attorneys.

18 3. If the Settlement Agreement is not finally approved by this Court, or if such final
19 approval is reversed or materially modified on appeal by any court, this Order (including but not
20 limited to the certification of the class) shall be vacated, null and void, and of no force or effect,
21 and Defendant and Plaintiffs shall be entitled to make any arguments for or against certification for
22 litigation purposes.

23 4. Lead Counsel and the Plaintiffs are appointed as adequate representatives of the
24 Settlement Class. David A. Straite of DiCello Levitt Gutzler LLC and Steven G. Grygiel of Grygiel
25 Law LLC are hereby appointed as Lead Class Counsel. Jay Barnes of Simmons Hanly Conroy LLC
26 is hereby appointed as Chair of the Plaintiffs' Counsel Executive Committee. Lead Counsel and
27 Mr. Barnes together are referred to herein as Class Counsel and shall represent the Settlement Class.

28 5. The Court also re-appoints the other members of the Plaintiffs' Counsel Executive

1 Committee: William H. “Billy” Murphy, Jr. of Murphy Falcon Murphy; Barry Eichen of Eichen
2 Crutchlow Zaslow LLP; Paul Kiesel of Kiesel Law LLP; Stephen Gorny of the Gorny Law Firm,
3 LC; James Frickleton of Bartimus Frickleton Robertson Rader; William M. Cunningham, Jr. of
4 Burns, Cunningham & Mackey, P.C.; and Andrew J. Lyskowski of Bergmanis Law Firm LLC.

5 6. The Court also re-appoints former Hawai‘i Attorney General Margery Bronster to
6 the AG/Settlement Advisory Committee, and appoints her as Chair of the Committee.

7 **Notice to the Settlement Class**

8 7. The Court approves the Notice Plan, Notice of Proposed Class Action Settlement,
9 Claim Form, and Opt-Out Form, which are attached to the Settlement Agreement as Exhibits B-E,
10 and finds that their dissemination substantially in the manner and form set forth in the Settlement
11 Agreement meets the requirements of Federal Rule of Civil Procedure 23 and due process,
12 constitutes the best notice practicable under the circumstances, and is reasonably calculated, under
13 the circumstances, to apprise members of the Settlement Class of the pendency of the Actions, the
14 effect of the proposed Settlement (including the releases contained therein), the anticipated Motion
15 for a Fee and Expense Award and for Service Awards, and their rights to participate in, opt out of,
16 or object to any aspect of the proposed Settlement.

17 8. By **April 30, 2022** [thirty (30) days after the issuance of this Order], Defendant shall,
18 for the purpose of facilitating Notice, provide the Settlement Administrator with names and email
19 addresses for members of the Settlement Class.

20 9. By **April 14, 2022** [fourteen (14) days after the issuance of this Order], Defendant
21 shall pay or cause to be paid into the Escrow Account a portion of the Settlement Fund that will
22 cover the Administrative Costs associated with Notice.

23 10. The Settlement Administrator shall provide Notice consistent with the Notice Plan
24 outlined in Exhibit B, and Notice shall be disseminated to Settlement Class Members by the Notice
25 Date on **July 14, 2022** [not later than seventy-five (75) days after receipt of information from
26 Defendant].

27 **Settlement Administration**

28 11. The Court appoints Angeion Group to serve as the Settlement Administrator.

1 Angeion Group shall supervise and administer the notice procedures, establish and operate the
2 Settlement Website, administer the claims processes, distribute cash payments according to the
3 processes and criteria set forth in the Settlement Agreement, and perform any other duties that are
4 reasonably necessary and/or provided for in the Settlement Agreement.

5 12. The Settlement Administrator shall act in compliance with the Amended Stipulated
6 Protective Order, ECF No. 227, including but not limited to making all necessary efforts and
7 precautions to ensure the security and privacy of Settlement Class Member information and protect
8 it from loss, misuse, unauthorized access and disclosure, and to protect against any reasonably
9 anticipated threats or hazards to the security of Settlement Class Member information; not using
10 the information provided by Defendant or Settlement Class Counsel in connection with the
11 Settlement or this Notice Plan for any purposes other than providing notice or conducting claims
12 administration; and not sharing Settlement Class Member information with any third parties
13 without advance consent from the Parties.

14 13. Settlement Class Members who wish to make a Claim must do so by submitting a
15 Claim Form by **September 22, 2022** [seventy (70) days after the Notice Date outlined in paragraph
16 10, above], in accordance with the instructions contained therein. The Settlement Administrator
17 shall determine the eligibility of Claims submitted and allocate the Settlement Funds in accordance
18 with the Settlement Agreement.

19 14. Settlement Class Members who wish to object to the Settlement must object in
20 writing and: (a) clearly identify the case name and number; (b) include the Objector's full name,
21 address, telephone number, email address; Facebook account URL (if reasonably available); the
22 email address and telephone number associated with the Settlement Class Member's Facebook
23 account; and his or her signature; (c) include the full name, address, telephone number, and email
24 address of the Objector's counsel (if the Objector is represented by counsel); and (d) state whether
25 the Objection applies only to the Objector, to a specific subset of the Settlement Class, and also
26 state with specificity the grounds for the objection, including any legal and factual support and any
27 evidence in support of the Objection. Objections must be filed with the Court or post-marked by
28 **September 12, 2022** [no later than sixty (60) days from the Notice Date outlined in paragraph 10,

1 above], to the Court at the following address: Class Action Clerk, United States District Court for
 2 the Northern District of California, 280 South 1st Street, San Jose, California 95113.

3 15. Any Settlement Class Member who seeks to be excluded from the Settlement Class
 4 must submit a request for exclusion, either using the Opt-Out Form or providing other written
 5 request, which must be sent electronically or postmarked by **September 12, 2022** [no later than
 6 sixty (60) days from the Notice Date outlined in paragraph 10, above]. If the Settlement Class
 7 Member chooses to request exclusion from the Settlement without an Opt-Out Form, such request
 8 must be timely sent by U.S. mail to the Settlement Administrator, requesting exclusion, providing
 9 their name, address, a signature, the name and number of the Action, and a clear and explicit
 10 statement that they wish to be excluded from the Settlement. The date of the postmark on the
 11 envelope containing the written request to opt-out shall be the exclusive means used to determine
 12 whether a request to opt-out has been timely submitted. In the event a postmark is illegible, the date
 13 of mailing shall be deemed to be three (3) days prior to the date that the Settlement Administrator
 14 received a copy of the request to opt-out of the Settlement. The Settlement Class Member must
 15 pay for postage. Any member of the Settlement Class who does not file a valid and timely request
 16 for exclusion shall be bound by the final judgment dismissing the Action on the merits with
 17 prejudice.

18 Final Fairness Hearing

19 16. The Final Fairness Hearing shall be held by the Court on **October 27, 2022**,
 20 **beginning at 9:00 a.m.**, to determine whether the requirements for certification of the Settlement
 21 Class have been met; whether the proposed settlement of the Actions on the terms set forth in the
 22 Settlement should be approved as fair, reasonable, adequate, and in the best interests of the
 23 Settlement Class Members; whether Settlement Class Counsel's motion or application for Fees and
 24 Expense Award and application for the Service Awards should be approved; and whether final
 25 judgment approving the Settlement and dismissing the Actions on the merits with prejudice against
 26 the Named Plaintiffs and all other Settlement Class Members should be entered. The Final Fairness
 27 Hearing may, without further notice to the Settlement Class Members (except those who have filed
 28 timely and valid objections and requested to speak at the Final Fairness Hearing), be continued or

1 adjourned by order of the Court.

2 17. Any Objector who timely submits an Objection has the option to appear and request
3 to be heard at the Final Fairness Hearing, either in person or through the Objector's counsel. Any
4 Objector wishing to appear and be heard at the Final Fairness Hearing must include a Notice of
5 Intention to Appear in the body of the Objector's Objection. Objectors who fail to submit or include
6 such timely Notice of Intention to Appear may not speak at the Final Fairness Hearing without
7 permission of the Court.

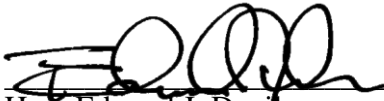
8 18. By **August 23, 2022** [not later than sixty-five (65) days before the Final Fairness
9 Hearing], Class Counsel shall file all papers in support of the application for the Final Approval
10 Order and Final Judgment, and any Motion for a Fee and Expense Award and/or for Service
11 Awards, and shall serve copies of such papers upon Defense Counsel and upon any objectors who
12 have validly complied with paragraphs 11 and 14 of this Order. All opposition papers shall be filed
13 by **September 22, 2022** [the last day to file a Claim Form, Objection, or Opt-Out Form], and any
14 reply papers shall be filed by **October 13, 2022** [twenty-one (21) days after the last day to file a
15 Claim Form, Objection, or Opt-Out of the Settlement].

16 19. Lead Counsel's motion or application for a Fee and Expense Award and for Service
17 Awards will be considered separately from the fairness, reasonableness, and adequacy of the
18 Settlement. Any appeal from any order relating solely to Settlement Class Counsel's Motion for a
19 Fee and Expense Award, and/or for Service Awards, or any reversal or modification of any such
20 order, shall not operate to terminate, vacate, or cancel the Settlement.

21 20. Defense Counsel and Class Counsel are hereby authorized to utilize all reasonable
22 procedures in connection with the administration of the Settlement which are not materially
23 inconsistent with either this Order or the Settlement Agreement.

24 IT IS SO ORDERED.

25 Dated: March 31, 2022

26 
27 Hon. Edward J. Davila
28 United State District Judge