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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BRENDAN LUNDY, et al.,

Plaintiffs,

v.

META PLATFORMS, INC.,

Defendant.

CASE NO. 3:18-cv-06793-JD

**~~PROPOSED~~ ORDER RE PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

1 Plaintiffs Brendan Lundy, Myriah Watkins, Elizabeth Childers, Michelle Agnitti, and Robin
2 Hodge, on behalf of themselves and a proposed Settlement Class, and defendant Meta Platforms, Inc.,
3 have asked the Court to preliminarily approval a proposed settlement. The Court expressed a number
4 of concerns about the proposed settlement at the hearings on December 15, 2022, and March 23, 2023,
5 including the potentially low dollar recovery across the class, the designation of *cy pres* recipients, and
6 the other issues identified at the hearings. *See* Dkt. Nos. 182, 195. Even so, the Court grants
7 preliminary approval, subject to a searching review of the issues before final approval is granted or
8 denied in subsequent proceedings. This order is based on a draft prepared by the parties and edited
9 pursuant to the Court’s practices and the issues in this case. The parties are directed to ensure that the
10 modifications of the opt-out provisions in Paragraph 7 below, and the objection procedures in
11 Paragraph 8, are reflected in all communications with the settlement class.

12 1. The Court has jurisdiction over the subject matter of this Action and over all Parties to
13 the Action.

14 2. The settlement is documented in an Amended Settlement Agreement, Dkt. No. 188-1,
15 which sets forth the terms and conditions for a proposed Settlement. The Court finds the settlement to
16 be, on a preliminary basis and subject to a final approval hearing, within the range of possible approval.

17 3. **Certification of the Settlement Class**. For purposes of settlement only: (a) Sabita J.
18 Soneji of Tycko & Zavareei LLP and Barrett J. Vahle of Stueve Siegel Hanson LLP are appointed as
19 Class Counsel for the Settlement Class; and (b) plaintiffs Brendan Lundy, Myriah Watkins, Elizabeth
20 Childers, Michelle Agnitti, and Robin Hodge are appointed Settlement Class Representatives for the
21 Settlement Class.

22 For purposes of settlement only, the Court conditionally certifies the following Settlement Class
23 as defined in the Settlement Agreement:

24 “All natural persons residing in the United States who used Facebook between
25 January 30, 2015 and April 18, 2018, inclusive, and whose iOS or Android Location
26 Services setting for the Facebook application was turned off at any point during that
27 period, but whose location information was inferred by Facebook via the user’s IP
28 Addresses.”

1 Excluded from the Settlement Class are: (i) all persons who are directors, officers, and agents
2 of Defendant or its subsidiaries and affiliated companies or are designated by Defendant as employees
3 of Defendant or its subsidiaries and affiliated companies; (ii) the Court, the Court's immediate family,
4 and Court staff, as well as any appellate court to which this matter is ever assigned, and its immediate
5 family and staff; and (iii) eligible persons who elect to opt out of the Settlement Class.

6 Subject to a final approval hearing, the Settlement Class satisfies the requirements of Rule 23
7 of the Federal Rules of Civil Procedure in that: (a) the Settlement Class is so numerous that joinder of
8 all members is impracticable; (b) there are questions of fact and law common to the Settlement Class;
9 (c) the claims of the Settlement Class Representatives are typical of the claims of the members of the
10 Settlement Class; (d) the Settlement Class Representatives and Class Counsel will fairly and adequately
11 protect the interests of the members of the Settlement Class; (e) common questions of law or fact
12 predominate over questions affecting individual members; and (f) a class action is a superior method
13 for fairly and efficiently adjudicating the Action.

14 If the Amended Settlement Agreement does not receive the Court's final approval, if final
15 approval is reversed on appeal, or if the Amended Settlement Agreement is terminated or otherwise
16 fails to become effective, the Court's grant of conditional class certification of the Settlement Class
17 will be vacated, the Parties will revert to their positions in the Action as they existed on June 23, 2022,
18 and the Class Representatives and the Settlement Class Members will once again bear the burden to
19 prove the propriety of class certification and the merits of their claims at trial.

20 4. **Notice and Administration.** For purposes of Rule 23(e), the Notice Plan submitted
21 with the Motion for Preliminary Approval and the forms of notice attached thereto are approved. Non-
22 material modifications to the notices and claim form may be made by the Settlement Administrator
23 without further order of the Court, so long as they are approved by the Parties and consistent in all
24 material respects with the Amended Settlement Agreement and this Order. The Settlement
25 Administrator is directed to carry out the Notice Plan in conformance with the Amended Settlement
26 Agreement and the below-stated schedule, and to perform all other tasks that the Amended Settlement
27 Agreement requires. Prior to the Final Approval Hearing, Class Counsel will file with the Court an
28 appropriate declaration by the Settlement Administrator with respect to complying with the provisions

1 of the Notice Plan. The form, content, and method of giving notice to the Settlement Class as described
2 in the Notice Plan submitted with the Motion for Preliminary Approval are accepted at this time as
3 practicable and reasonable in light of the rather unique circumstances of this case.

4 5. The Angeion Group will serve as the Settlement Administrator. The Settlement
5 Administrator will act in compliance with the Stipulated Protective Order (Dkt. Nos. 119, 120),
6 including but not limited to making all necessary efforts and precautions to ensure the security and
7 privacy of Settlement Class Member information and protect it from loss, misuse, unauthorized access
8 and disclosure, and to protect against any reasonably anticipated threats or hazards to the security of
9 Settlement Class Member information; not using the information provided by Defendant or Class
10 Counsel in connection with the Settlement or this Notice Plan for any purposes other than providing
11 notice or conducting claims administration; and not sharing Settlement Class Member information with
12 any third parties without advance consent from the Parties.

13 The Angeion Group will begin giving notice under the Notice Plan to potential Settlement Class
14 Members within 15 days after entry of this Preliminary Approval Order, and the social media and
15 publication notice will be effectuated by the Notice Date, which Angeion calculates will be 45 days
16 after entry of this Preliminary Approval Order. Angeion will further provide a declaration that Notice
17 has been effectuated at least 35 days prior to the Final Approval Hearing (“Proof of Notice Date”).

18 6. **Submission of Claims.** Settlement Class Members will have 60 calendar days from the
19 Notice Date to submit their claim forms (“Claims Deadline”). Settlement Class Members who submit
20 a valid claim form approved by the Settlement Administrator within 60 days of the Notice Date may
21 qualify to receive benefits of the Settlement. Class Counsel will have the discretion, but not the
22 obligation, to accept late-submitted claims for processing by the Settlement Administrator, so long as
23 processing does not materially delay distribution of compensation to Settlement Class Members. No
24 person will have any claim against Class Counsel or the Settlement Administrator by reason of the
25 decision to exercise discretion whether to accept late-submitted claims.

26 The total amount distributed to the Settlement Class Members who submit valid claims will be
27 the Settlement Fund, less the cost of settlement notice and administration, Attorneys’ Fees and
28 Expenses Award, and Service Awards (the “Net Settlement Fund”). In the event the Court determines

1 at Final Approval such distribution to Settlement Class Members is not economically or
2 administratively feasible, the Net Settlement Fund will be distributed to the *Cy Pres* Recipients set
3 forth in the Amended Settlement Agreement and as approved by the Court. If the Net Settlement Fund
4 is distributed to Settlement Class Members, each Settlement Class Member who submits a valid claim
5 will be provided with an equal *pro rata* share of the Net Settlement Fund. The actual amount provided
6 to each Settlement Class Member who submits a valid claim may be increased or decreased on a *pro*
7 *rata* basis based on the size of the Net Settlement Fund and the number of Settlement Class Members
8 who submit valid claims.

9 7. **Opting-Out from Settlement Class.** Any person falling within the definition of the
10 Settlement Class may, upon request, be excluded or “opt out” from the Settlement Class. Any such
11 person who desires to opt out must submit written notice of such intent online through the online claims
12 portal or via United States mail to the designated address established by the Settlement Administrator.
13 The written notice must (i) identify the case name of the Action; (ii) identify the name and current
14 address of the individual seeking exclusion from the Settlement; (iii) be signed by the individual
15 seeking exclusion; (iv) include a statement clearly indicating the individual’s intent to be excluded
16 from the Settlement; and (v) request exclusion only for that one individual whose personal signature
17 appears on the request.

18 Opt-out requests seeking exclusion on behalf of more than one individual will be deemed invalid
19 by the Settlement Administrator. To be effective, the written notice must be postmarked no later than
20 the Opt-Out Deadline or submitted online through the claims portal and verified no later than the
21 Opt-Out Deadline in accordance with the Settlement. All those persons submitting valid and timely
22 notices of opt out will not be entitled to receive any benefits of the Settlement.

23 A Settlement Class Member who does not timely and validly exclude themselves from the
24 Settlement will be bound by the terms of the Settlement. If final judgment is entered, any Settlement
25 Class Member who has not submitted a timely, valid written notice of opt out from the Settlement Class
26 will be bound by all subsequent proceedings, orders, and judgments in this matter, including but not
27 limited to the Releases set forth in the Amended Settlement Agreement and incorporated in the
28 judgment.

1 8. **Objections and Appearances.** A Settlement Class Member may enter an appearance
2 in the Action, at their own expense, individually or through counsel of their own choice. If a Settlement
3 Class Member does not enter an appearance, they will be represented by Class Counsel. Any
4 Settlement Class Member who wishes to object to the Settlement, the benefits of the Settlement,
5 Service Awards, and/or the Attorneys’ Fees and Expenses Award, or to appear at the Final Approval
6 Hearing and show cause, if any, why the Settlement should not be approved as fair, reasonable, and
7 adequate to the Settlement Class, why a Final Approval Order and Judgment should not be entered
8 thereon, why the benefits of the Settlement should not be approved, or why the Service Awards and/or
9 the Attorneys’ Fees and Expenses Award should not be granted, may do so as provided herein. An
10 objector should file a written objection at least 14 calendar days before the final approval hearing. The
11 written objection must include: (i) the case name and number of the Action; (ii) the full name, address,
12 telephone number and email address of the objecting Settlement Class Member, and if represented by
13 counsel, of his/her counsel; (iii) the Facebook account URL (if reasonably available) and the email
14 address and telephone number associated with the objector’s Facebook account; (iv) a statement of
15 whether the objection applies only to the objector, to a specific subset of the class, or to the entire class;
16 (v) a statement of the specific grounds for the objection; (vi) a statement of whether the objecting
17 Settlement Class Member intends to appear at the Final Approval Hearing, and if so, whether
18 personally or through counsel; and (vii) the objector’s signature.

19 9. **Final Approval Hearing.** A hearing will be held by this Court in the Courtroom of the
20 Honorable James Donato, United States District Court for the Northern District of California, United
21 States Courthouse, Courtroom 11 on the 19th Floor, 450 Golden Gate Avenue, San Francisco, CA, at
22 10:00 a.m. on October 19, 2023 (“Final Approval Hearing”), to determine: (a) whether the Settlement
23 should be approved as fair, reasonable, and adequate to the Settlement Class; (b) whether a Final
24 Approval Order and Judgment should be entered; (c) whether the Settlement benefits as proposed in
25 the Amended Settlement Agreement should be approved as fair, reasonable, and adequate; (d) whether
26 to approve the application for Service Awards for the Settlement Class Representatives and an
27 Attorneys’ Fees and Expenses Award; and (e) any other matters that may properly be brought before
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1 the Court in connection with the Settlement. The Court may approve the Settlement with such
2 modifications as the Parties may agree to, if appropriate, without further notice to the Settlement Class.

3 10. **Final Approval Briefing.** Settlement Class Representatives and Class Counsel are
4 directed to file their motion seeking final approval of the Settlement by no later than thirty (30) days
5 after the Claims Submission Deadline. All briefing and supporting documents in support of a motion
6 for Attorneys' Fees and Expenses and Service Awards must be filed thirty-five (35) days prior to the
7 Objection Deadline.

8 11. **Reasonable Procedures.** Class Counsel and Defense Counsel are hereby authorized to
9 use all reasonable procedures in connection with approval and administration of the Settlement that are
10 not materially inconsistent with this Order or the Amended Settlement Agreement, including making,
11 without further approval of the Court, minor changes to the form or content of the notices and other
12 exhibits that they jointly agree are reasonable or necessary to further the purpose of effectuating the
13 Amended Settlement Agreement.

14 12. **Extension of Deadlines.** Upon application of the Parties and good cause shown, the
15 deadlines set forth in this Order may be extended by order of the Court, without further notice to the
16 Settlement Class. Settlement Class Members must check the Settlement website
17 (<https://www.facebooklocationsettlement.com/>) regularly for updates and further details regarding
18 extensions of these deadlines. The Court reserves the right to adjourn or continue the Final Approval
19 Hearing, and/or to extend the deadlines set forth in this Order, without further notice of any kind to the
20 Settlement Class.

21 13. **Termination of the Settlement and Use of this Order.** This Order will become null
22 and void and will be without prejudice to the rights of the Parties, all of which will be restored to their
23 respective positions existing as of June 23, 2022, if the Effective Date does not occur or the Settlement
24 is otherwise terminated in accordance with the terms of the Settlement. In such an event, the Settlement
25 will become null and void and will be of no further force and effect, and neither the Settlement
26 (including any Settlement-related filings) nor the Court's orders, including this Order, relating to the
27 Settlement may be used or referred to for any purpose whatsoever. For the avoidance of doubt, if the
28 Effective Date does not occur or the Settlement is otherwise terminated in accordance with the terms

1 of the Settlement, then neither the Settlement (including any Settlement-related filings) nor the Court's
 2 orders, including this Order, relating to the Settlement will be: (1) construed or used as an admission,
 3 concession, or declaration by or against Defendant of any fault, wrongdoing, breach, liability, or the
 4 certifiability of any class; (2) construed or used as an admission, concession, or declaration by or
 5 against the Settlement Class Representatives or any other Settlement Class Member that his or her
 6 claim lacks merit or that the relief requested is inappropriate, improper, or unavailable; or (3) construed
 7 or used as a waiver by any Party of any defense or claim he, she, or it may have in this litigation or in
 8 any other lawsuit.

9 14. **Related Orders.** All further proceedings in the Action are ordered stayed until entry of
 10 the Final Approval Order or termination of the Amended Settlement Agreement, whichever occurs
 11 earlier, except for those matters necessary to obtain and/or effectuate final approval of the Amended
 12 Settlement Agreement.

13 15. For the sake of clarity, the Court enters the following deadlines:

<u>ACTION</u>	<u>DATE</u>
Notice Commences	May 11, 2023
Notice Date	June 12, 2023
Opt-Out Deadline	August 11, 2023
Claims Deadline	August 11, 2023
Motion for Attorneys' Fees and Expenses and Service Awards	August 31, 2023
Final Approval Brief Due	September 11, 2023
Proof of Notice Submitted	No later than September 14, 2023


1	Objections Deadline	October 5, 2023
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3	Responses to Objections Due	October 12, 2023
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5	Final Approval Hearing	October 19, 2023, at 10:00 a.m.
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8 **IT IS SO ORDERED.**

9 Dated: April 26, 2023

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12 JAMES DONATO
United States District Judge

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