

1 SCOTT A. KAMBER (*pro hac vice*)  
 2 skamber@kamberlaw.com  
 3 DAVID A. STAMPLEY (*pro hac vice*)  
 4 dstampley@kamberlaw.com  
 5 KAMBERLAW, LLC  
 6 100 Wall Street, 23rd Floor  
 7 New York, New York 10005  
 Telephone: (212) 920-3072  
 Facsimile: (212) 202-6364

8 Class Counsel  
 9 Additional counsel listed on signature page

10 **UNITED STATES DISTRICT COURT**  
 11 **CENTRAL DISTRICT OF CALIFORNIA**

12 In Re QUANTCAST ADVERTISING  
 13 COOKIE LITIGATION, and

No. 2:10-cv-05484-GW-JCG  
 No. 2:10-cv-05948-GW-JCG

14 In Re CLEARSPRING FLASH  
 15 COOKIE LITIGATION

[Assigned to the Hon. George H. Wu]

**SUPPLEMENT TO PLAINTIFF'S  
 MOTION FOR FINAL APPROVAL  
 OF CLASS ACTION SETTLEMENT**

Date: June 13, 2011  
 Location: Courtroom 10  
 312 N. Spring Street  
 Los Angeles, CA 90012  
 Time: 9:30 a.m.

1       **I.     INTRODUCTION**

2           This well-publicized settlement of a nationwide class of millions of Inter-  
3 net users drew just a single objection. That objection should be overruled, and the  
4 settlement approved, because the objector who filed it misapprehended a basic  
5 fact of the settlement: Although, at the Court’s specific direction, plaintiffs  
6 conspicuously identified their proposed recipients of *cy pres* payments and the  
7 amounts each recipient would receive, the objector incorrectly complains that the  
8 *cy pres* recipients have not been identified. This basic information was provided  
9 in summary form in the notice, and in detail in the documents provided on the  
10 settlement website. The objector is an attorney, making his failure to conduct a  
11 reasonable inquiry before filing his objection inexcusable.<sup>1</sup>

12           The Court already is familiar with this case, the issues it presents and the  
13 appropriate resolution at which the parties mutually arrived. Plaintiffs contend in  
14 these actions that defendants Quantcast and Clearspring placed Adobe Flash  
15 Player local stored objects (“LSOs” or “Flash cookies”) on class members’  
16 computers without adequate disclosure, and then, if users deleted the standard  
17 browser cookies that Quantcast and Clearspring also implanted for the purpose of  
18 tracking users’ web browsing history, Quantcast and Clearspring used the infor-  
19 mation stored in the Flash cookies to regenerate the deleted browser cookies and  
20 resume the tracking that users believed they had foreclosed. Plaintiffs also sued  
21 several large customers of Quantcast and Clearspring whose websites Quantcast  
22 and Clearspring allegedly used to implant these Flash cookies.

23           All defendants deny liability and initially expressed an intent to defend  
24 Plaintiffs’ case vigorously. Pursuant to the proposed settlement, however,  
25 Quantcast and Clearspring promise not to use Flash cookies to regenerate infor-

26 \_\_\_\_\_  
27 <sup>1</sup>       In fact, this objector also filed the same objection with the same mistake in  
28 the VideoEgg Settlement as well. He has refused to withdraw either objection  
even though his error was brought to his attention.

1 mation deleted from browser cookies. As compensation to the class, Quantcast  
2 and Clearspring further have agreed to pay \$2.4 million, the bulk of which (after  
3 the deduction of notice and administration costs and Plaintiffs’ counsel’s fee) will  
4 be distributed to groups that conduct research and educate users about important  
5 internet privacy issues. The customer defendants and their corporate parents,  
6 referred to in the settlement as the “Undertaking Parties,” have promised to  
7 modify their website disclosures in ways that will benefit the class, and to use  
8 their substantial clout to request that the industry rules governing behavioral  
9 advertising are changed to prevent *any* company — not just Quantcast and  
10 Clearspring — from using Flash cookies to “respawn” user-deleted browser  
11 cookies.

12           On March 3, 2011, this Court granted preliminary approval to the settle-  
13 ment (*Quantcast* action, Dkt. 72; *Clearspring* action, Dkt. 49). The Court ap-  
14 proved a notice plan, pursuant to which the Settlement Administrator caused  
15 notice of the settlement to be widely distributed in print and online media. Plain-  
16 tiffs filed their motions for Final Approval of Class Action Settlement and Ap-  
17 proval of Attorneys’ Fees and Costs and Incentive Awards on April 20, 2011  
18 (“Final Approval Motion” *Quantcast* action Dkt 76; *Clearspring* action Dkt. 53),  
19 so that anyone contemplating an objection to the settlement could review all this  
20 information long before the deadline for objections passed. The Court’s prelimi-  
21 nary approval order then directed plaintiffs to file this final brief responding to  
22 any objections received.

23  
24  
25  
26  
27  
28

1       **II. THE SETTLEMENT WARRANTS FINAL APPROVAL**

2           Plaintiffs’ prior brief in support of final approval explained the standards  
3 pursuant to which Ninth Circuit courts should evaluate proposed class action  
4 settlements. *See Quantcast* action Dkt 76 at 9-10; *Clearspring* action Dkt. 53 at  
5 9-10. Plaintiffs’ final brief addressed seven of the eight factors the Ninth Circuit  
6 identified in *Molski v. Gleich*, 318 F.3d 937, 953 (9<sup>th</sup> Cir. 2003).<sup>2</sup> This brief  
7 addresses the final factor in the Court’s determination of the fairness, adequacy,  
8 and reasonableness of the settlement: Class members’ reaction to the settlement,  
9 which has been overwhelmingly positive.

10       **A. Reaction of Class Members**

11           “It is established that the absence of a large number of objections to a  
12 proposed class action settlement raises a strong presumption that the terms of a  
13 proposed class action settlement are favorable to the class members.” *Nat’l Rural*  
14 *Telecomms Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528-29 (C.D. Cal. 2004).  
15 Here, out of tens of millions of class members, only one person objected to the  
16 well-publicized settlement, and only one person opted out. This is an extraordi-  
17 nary result that favors the settlement’s approval. *See Churchill Village LLC v.*  
18 *Gen. Elec.*, 361 F.3d 566, 577 (9<sup>th</sup> Cir. 2004).

19           The parties established a dedicated website,  
20 [www.flashcookiesettlement.com](http://www.flashcookiesettlement.com), to provide information about the settlement,  
21 including the full Notice, the Settlement Agreement and all of the important court  
22 filings in the case. The parties published a summary notice in *Parade* magazine  
23 — an insert in millions of Sunday newspapers across the country — as well as

24 \_\_\_\_\_  
25 <sup>2</sup> The *Molski* factors are: (1)[T]he strength of plaintiffs’ case; (2) the risk,  
26 expense, complexity, and likely duration of further litigation; (3) the risk of  
27 maintaining class action status throughout the trial; (4) the amount offered in  
28 settlement; (5) the extent of discovery completed, and the stage of the proceed-  
ings; (6) the experience and views of counsel; (7) the presence of a governmental  
participant; and (8) the reaction of the class members to the proposed settlement.

1 *Computer World, Information Week, and Newsweek.* The parties also conducted  
2 an Internet notice campaign that included banner and text ads placed on websites  
3 that have the largest number of unique viewers per month on the Google Adwords  
4 network; and distributed a press release. Articles about the settlement appeared in  
5 numerous major media. Nearly 10,000 people took the time to visit the settlement  
6 website, but only one person filed an objection.

7 Even if Cannata’s lone objection was a serious one — which, as explained  
8 below, it is not — the receipt of just a single objection should weigh heavily in  
9 favor of the Court approving this Settlement. *See Ellis v. Naval Air Rework*  
10 *Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980) (fact that only three out of 2,500 class  
11 members maintained objections to the settlement showed an “overwhelming  
12 sentiment of the class in favor of the [d]ecree, a factor which provides strong  
13 support for the fairness of its terms”); *Fernandez*, 2008 WL 8150856 at \* 7 (three  
14 objections out of 77,000 notices mailed suggests an “overwhelmingly positive”  
15 reaction). Here, because the objection is factually wrong, meaning that *no* class  
16 members submitted a valid objection to any aspect of the settlement, the eighth  
17 *Molski* factor weighs entirely in favor of the settlement’s approval.

18 **B. Objection by Sam Cannata**

19 The lone objector, attorney Sam Cannata, objects to the Settlement on the  
20 grounds that (1) it failed to fully designate *cy pres* recipients; (2) it does not  
21 require specific improvements in privacy controls; and (3) it provides no benefits  
22 to the class. Each of Mr. Cannata’s statements is incorrect.

1       1.       *The Parties Have Provided the Names of Cy Pres Recipients*

2           Mr. Cannata claims that the Settlement is unfair, inadequate, and unrea-  
3       sonable because it fails to identify and determine the Fund recipients. (Obj. p. 8).  
4       However, as explained to Mr. Cannata in an email dated May 13, 2011 by the  
5       Undertaking Parties' counsel Jeffrey Jacobson, (Declaration of Scott A. Kamber,  
6       Ex. A), Plaintiffs' counsel identified the Fund recipients in a letter to the Court on  
7       January 20, 2011 — prior to this Court's preliminary approval of the settlement.  
8       (*Quantcast* action, Dkt. 63; *Clearspring* action, Dkt. 42). In addition to filing the  
9       list of *cy pres* recipients with the Court, the list of recipients was available for  
10      download on the settlement website, [www.flashcookiesettlement.com](http://www.flashcookiesettlement.com). Mr.  
11      Cannata had ample time to review the proposed recipients. The chosen recipients  
12      include an impressive array of organizations committed to the privacy issues that  
13      are at the heart of this litigation.

14  
15      2.       *The Settlement Provides For Specific Improvements in Privacy Controls*

16           Mr. Cannata objects to the Settlement to the extent that he feels it does not  
17      provide any specific improvements or privacy education, any standards for such  
18      improvements, or any oversight of such improvements. (Obj. p. 10). These  
19      objections lack any foundation, and show a misunderstanding of the terms of the  
20      Settlement.

21           First, Plaintiff's counsel and outside experts confirmed that Defendants  
22      Quantcast and Clearspring are no longer engaged in the activity at issue in this  
23      litigation, and had ended the practice prior to the filing of the lawsuits. Even  
24      given these circumstances, the Plaintiffs were able to obtain enforceable promises  
25      from Quantcast and Clearspring that they would not resume this conduct. This is  
26      not a "vague promise"; it is part of an enforceable Settlement Agreement. The  
27      Settlement Agreement also required the Undertaking Parties to lobby to enact  
28      meaningful reforms to the industry's self-regulatory guidelines to include express

1 prohibitions on the use of LSOs — lobbying that, pursuant to the Settlement  
2 Agreement’s terms, already has begun. Again, these actions are part of an  
3 enforceable Settlement Agreement, and if not performed may subject Defendants  
4 to court action. These are substantive improvements that require action on the  
5 part of Defendants. While these provisions are only enforceable through June 30,  
6 2013, it is assumed that these provisions will be embodied in new industry guide-  
7 lines, which will continue to effect change into the future. It was not feasible to  
8 make these provisions unlimited in duration due to the constant changes in tech-  
9 nology.

10 3. *The Settlement Provides a Substantial Benefit to the Class*

11 Mr. Cannata’s contention that there is no benefit to the class is simply  
12 wrong. Quantcast and Clearspring are paying \$2.4 million to resolve this case,  
13 and the Undertaking Parties, whose websites are some of the most heavily traf-  
14 ficked on the Internet, are making meaningful changes to their privacy disclo-  
15 sures. Contrary to Mr. Cannata’s contention that the Settlement allows Defend-  
16 ants “unfettered discretion” in deciding their obligations, Obj. p. 11, the Settle-  
17 ment Agreement, in ¶¶ 4.19-4.20.6, specifies each Defendant’s obligations in  
18 detail. Although it is true that the settlement funds will not be distributed to class  
19 members directly (because the class presumptively numbers in the tens of millions  
20 and because class members cannot be individually identified), the *cy pres* recipi-  
21 ents’ efforts will improve Internet privacy for the current Internet users that  
22 comprise the Settlement Class, and future users, too.<sup>3</sup>

23  
24  
25 <sup>3</sup> As set forth more fully in Plaintiffs’ Final Approval Motion, a *cy pres* distribu-  
26 tion was appropriate considering the size of the potential recovery per Class  
27 member, and the fact that injunctive relief represented a large part of the recov-  
28 ery. *See State of New York v. Keds Corp.*, 1994 WL 97201 at \*3 (S.D.N.Y.);  
*Francisco v. Numismatic Guaranty Corp. of Am.*, 2008 WL 649124 (S.D. FL).

1           The recipients chosen for the *cy pres* distributions are well known, highly  
2 regarded organizations. The *cy pres* distributions will fund research and educa-  
3 tion projects and activities to promote consumer awareness and choice regarding  
4 the privacy, safety and security of personal information that is collected through  
5 the Internet— a direct benefit to Class members whose privacy rights were alleg-  
6 edly violated. *See In re Mexico Money Transfer Litig.*, 164 F. Supp.2d 1002,  
7 1031-32 (N.D. Ill. 2000) (approving *cy pres* distribution to entities whose primary  
8 purpose included service to the plaintiff communities).

9           Mr. Cannata, the objector, is familiar with class action litigation. *See, e.g.*,  
10 *Restivo v. Continental Airlines, Inc.*, \_\_ N.E.2d \_\_, 2011 WL 287019 (Ohio App.  
11 Ct Jan. 20, 2011) (affirming dismissal of putative class claims brought by Mr.  
12 Cannata’s client for failure to state a claim).<sup>4</sup> He has objected to class action  
13 settlements before. *See, e.g., In re Merck & Co., Inc. Vytorin ERISA Litig.*, No.  
14 08-CV-285 (DMC), 2010 WL 547613, at \*7 n.3 (D. N.J. Feb. 9, 2010) (Cannata  
15 objected to plaintiffs’ fee award but withdrew his objection after plaintiffs’  
16 counsel agreed to reduce their cost reimbursement request by \$55,000 and to pay  
17 a portion of this amount to Mr. Cannata).

18  
19  
20  
21  
22  
23  
24 \_\_\_\_\_  
25 <sup>4</sup> Troublingly, although Mr. Cannata’s firm website,  
26 [www.cannataphillipslaw.com/ staff.html](http://www.cannataphillipslaw.com/staff.html), describes him as having “over 16 years  
27 of experience handling various legal matters,” it appears he has only been an  
28 admitted attorney since 2005. *See In re Administrative Actions Dated April 30,*  
*2004*, 807 N.E.2d 929 (listing Mr. Cannata as having successfully passed the bar  
exam in 2004).



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**III. CONCLUSION**

For the reasons stated above, as well as the reasons set forth more fully in Plaintiffs' Final Approval Motion, the Court should deny Mr. Cannata's objection and grant final approval of the Settlement Agreement.

Dated May 31, 2011

KAMBERLAW, LLC

/s Scott A. Kamber  
Scott A. Kamber (*pro hac vice*)  
skamber@kamberlaw.com  
David A. Stampley (*pro hac vice*)  
dstampley@kamberlaw.com  
KamberLaw, LLC  
100 Wall Street, 23rd Floor  
New York, New York 10005  
Telephone: (212) 920-3072  
Facsimile: (212) 920-3081

Class Counsel

Avi Kreitenberg (SBN 266571)  
akreitenberg@kamberlaw.com  
KamberLaw, LLP  
1180 South Beverly Drive, Suite 601  
Los Angeles, California 90035  
Telephone: (310) 400-1050  
Facsimile: (310) 400-1056

Joseph H. Malley  
malleylaw@gmail.com  
Law Office of Joseph H. Malley  
1045 North Zang Blvd Dallas, TX 75208  
Telephone: (214) 943-6100

1 David Parisi (SBN 162248)  
2 dcparsi@parisihavens.com  
3 Suzanne Havens Beckman (SBN 188814)  
4 shavens@parisihavens.com  
5 Parisi & Havens LLP  
6 15233 Valleyheart Drive  
7 Sherman Oaks, California 91403  
8 Telephone: (818) 990-1299

9 Jeremy Wilson  
10 Jeremy@wilsontrosclair.com  
11 Kenneth P. Trosclair  
12 pete@wilsontrosclair.com  
13 Wilson Trosclair & Lovins, P.L.L.C.  
14 302 N. Market St., Suite 510  
15 Dallas, Texas 75202  
16 Telephone: (214) 484-1930

17 Majed Nachawati  
18 mn@fnlawfirm.com  
19 Fears Nachawati Law Firm  
20 4925 Greenville Ave, Suite 715  
21 Dallas, Texas 75206  
22 Telephone: (214) 890-0711  
23  
24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that copies of the foregoing document and the accompanying declaration were served via e-mail to all counsel of record registered for service through the CM/ECF. Further, the undersigned caused the foregoing to be served by first class U.S. mail to the following on May 31, 2011:

*Via First Class Mail:*

Sam. P. Cannata  
Pro Se Objector  
9555 Vista Way, Suite 200  
Cleveland, Ohio 44125

/s Scott A. Kamber