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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MATTHEW CAMPBELL and MICHAEL HURLEY, on behalf of themselves and all others similarly situated,

Plaintiff,

v.

FACEBOOK, INC.,

Defendant.

Case No. C 13-05996 PJH (MEJ)

**[PROPOSED] ORDER GRANTING
PLAINTIFFS' MOTION FOR CLASS
CERTIFICATION**

1 Plaintiffs' Motion for Class Certification (hereinafter "Motion"), pursuant to Federal Rule
2 of Civil Procedure 23 came on regularly for hearing on March 16, 2016 in the United States
3 District Court for the Northern District of California, the Honorable Phyllis J. Hamilton presiding.
4 All parties were represented by counsel.

5 Plaintiffs move for certification of the following Class:

6 All natural-person Facebook users located within the United States
7 who have sent, or received from a Facebook user, private messages
8 that included URLs in their content (and from which Facebook
9 generated a URL attachment), from within two years before the
10 filing of this action up through the date of the certification of the
11 class.

12 Having considered the memoranda and declarations filed by all parties, oral argument of
13 counsel, and the relevant statutory and case law, the Court GRANTS Plaintiffs' Motion and
14 FINDS as follows:

15 **Certification of the Class is appropriate under Federal Rule of Civil Procedure 23(a)**

16 1. The proposed Class is so numerous that joinder of all members is impracticable.
17 Fed. R. Civ. P. 23(a)(1). "In order to satisfy this requirement, plaintiffs need not state the 'exact'
18 number of potential class members, nor is there any specific magic number that is required." *In re*
19 *Dynamic Random Access Memory (DRAM) Antitrust Litig.*, No. 2-md-1486-PJH, 2006 WL
20 1530166, at *3 (N.D. Cal. June 5, 2006); *In re Yahoo Mail Litig.*, 308 F.R.D. 577, 590 (N.D. Cal.
21 2015). Although the precise size of the class is unknown, Plaintiffs estimate that the class
22 members number in the millions.

23 2. There are issues of law and fact common to the Class. Fed. R. Civ. P. 23(a)(2).
24 Common questions include: (1) whether Facebook's conduct was intentional; (2) whether private
25 messages were "intercept[ed]" within the meaning of ECPA and CIPA, including whether
26 Facebook acquired or endeavored to acquire "contents" of electronic communications, and
27 whether such interceptions occurred by means of a "device"; (3) whether such interceptions
28 occurred during transmission; (4) whether such interceptions occurred in the "ordinary course" of
an electronic communications service provider's business; (5) whether any public disclosure
regarding Facebook's practices was sufficiently specific to establish implied consent for those

1 who viewed it; (6) whether generation of a “URL preview” establishes implied consent; and (7)
2 how, and to what extent, Facebook profited from the alleged ECPA violations.

3 3. The claims of named Plaintiffs Matthew Campbell and Michael Hurley are typical
4 of the Class members’ claims. Fed. R. Civ. P. 23(a)(3). The named Plaintiffs’ claims are
5 “reasonably co-extensive with those of absent class members” because they stem from “the same
6 course of conduct.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998); *see also*
7 *Ades v. Omni Hotels Mgmt. Corp.*, No. 13-cv-02468, 2014 WL 4627271, at *9 (C.D. Cal. Sept. 8,
8 2014) (finding class representatives’ claims typical where “course of conduct . . . common to the
9 class, and privacy invasions typical to those of the class generally” were alleged).

10 4. The representative parties fairly and adequately protect the interests of the class.
11 Fed. R. Civ. P. 23(a)(4). No discernable conflicts of interest exist between the named plaintiffs
12 and the absent class members. The evidence and the history of the instant litigation demonstrate
13 that plaintiffs have retained skilled and experienced counsel to represent them in these
14 proceedings. *See Local Joint Executive Bd. of Culinary/Bartender Trust Fund v. Las Vegas*
15 *Sands, Inc.*, 244 F.3d 1152, 1162 (9th Cir. 2001).

16 **Certification of the Class is appropriate under Federal Rule of Civil Procedure 23(b)(3)**

17 5. Certification of the Class is appropriate under Fed. R. Civ. P. 23(b)(3) because
18 common issues predominate over individual issues and the class action device is superior to all
19 other available methods for fairly and efficiently resolving this matter. Fed. R. Civ. P. 23(b)(3);
20 *In re Wells Fargo Home Mortgage*, 571 F.3d 953, 958–59 (9th Cir. 2009); *Wang v. Chinese Daily*
21 *News, Inc.*, 737 F.3d 538, 545 (9th Cir. 2013).

22 a. The predominance analysis “focuses on the relationship between the
23 common and individual issues in the case and tests whether proposed classes are sufficiently
24 cohesive to warrant adjudication by representation.” *Wang*, 737 F.3d at 545 (citations and
25 internal quotation marks omitted). “The test for predominance is met ‘when there exists
26 generalized evidence which proves or disproves an [issue or element] on a simultaneous, class-
27 wide basis, since such proof obviates the need to examine each class members’ individual
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1 position.” *In re Online DVD Rental Antitrust Litig.*, No. 09-md-2029-PJH, 2010 WL 5396064, at
2 *5 (N.D. Cal. Dec. 23, 2010) *aff’d* 779 F.3d 934 (9th Cir. 2015) (citation omitted).

3 b. Here, the predominate legal question is whether Facebook obtained or
4 sought to obtain the content of Class members’ private messages in violation of ECPA and CIPA.
5 Here, the record shows that each element of both ECPA and CIPA liability, as well as to damages
6 and appropriate equitable relief, may be established with common proof. The Court therefore
7 finds that the Class is sufficiently cohesive to warrant adjudication of their claims on a class-wide
8 basis, and that a class action is the most efficient way to proceed.

9 **Certification of the Class is appropriate under Federal Rule Civil Procedure 23(b)(2)**

10 6. Certification of the Class is appropriate under Federal Rule of Civil Procedure
11 23(b)(2) because the alleged “pattern or practice” at issue in these proceedings “is generally
12 applicable to the class as a whole.” *Rodriguez v. Hayes*, 591 F.3d 1105, 1125 (9th Cir. 2010)
13 (quoting *Walters v. Reno*, 145 F.3d 1032, 1047 (9th Cir. 1998)). The relief sought—cessation of
14 the practice, destruction of any records created from illegally-obtained private message content,
15 and a declaration that such conduct violates ECPA and CIPA—is significant, and would benefit
16 the Class as a whole. *In re Yahoo Mail Litig.*, 308 F.R.D. 577, 598 (N.D. Cal. 2015).

17 7. The firms Lief, Cabraser, Heimann & Bernstein, LLP, and Carney Bates &
18 Pulliam PLLC will fairly and adequately represent the interests of the class. Fed. R. Civ. P.
19 23(g). Both firms are substantially experienced in prosecuting consumer class actions, have been
20 appointed lead counsel in many such cases, and have demonstrated that they will commit the
21 necessary resources to vigorously represent the Class here.

22 Accordingly, the Court **ORDERS** as follows:

23 1. The Class, as defined above, is certified pursuant to Federal Rule of Civil
24 Procedure 23(b)(3).

25 2. The claims, issues, and defenses herein certified are those relating to Facebook’s
26 liability to the Class members for intercepting their private messages containing URLs, and for
27 using and retaining information thus obtained.

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1 3. Named Plaintiffs Matthew Campbell and Michael Hurley are appointed as
2 representatives of the Class.

3 4. The firms Lief, Cabraser, Heimann & Bernstein, LLP, and Carney Bates &
4 Pulliam PLLC are appointed as Class Counsel to represent the Class.

5 5. Class Counsel shall prepare and submit, within ____ days from the date of this
6 Order, proposed forms of notice to be sent to members of the Class. Defendant may file any
7 comments to the forms of notice within ____ days, and Class Counsel may reply within ____ days
8 thereafter.

9 6. Defendant shall prepare and submit to Class Counsel, within ____ days from the
10 date of this Order, a list of the name, e-mail address, and mailing address of all Class members
11 who can be identified with reasonable and diligent effort.

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13 **It is so ORDERED.**

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15 Dated: March ____, 2016

Phyllis J. Hamilton
United States District Judge

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