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Attorneys for Plaintiffs and the Class

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

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

Plaintiffs,

v.

FACEBOOK, INC.,

Defendant.

Case No. 4:13-cv-05996-PJH

PLAINTIFFS' REPLY IN SUPPORT OF FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND AWARD OF ATTORNEYS' FEES AND COSTS AND SERVICE AWARDS AND RESPONSE TO OBJECTION

Date: August 9, 2017
Time: 9:00 am
Judge: Hon. Phyllis J. Hamilton
Place Courtroom 3, 3rd Floor

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I. INTRODUCTION

Anna St. John—an attorney with the "Center for Class Action Fairness," an organization the sole purpose of which is to object to class action settlements[1]—has lodged a formulaic objection to the proposed Settlement premised on a fundamental misunderstanding of the nature of this lawsuit, the class certified, and the proposed Settlement. As an initial matter, St. John apparently takes issue with the fact that the Settlement provides no monetary relief for class members. However, this Court *declined to certify a damages class*, and therefore, class counsel are not in a position to obtain monetary relief for the class—a fact of which St. John appears to be totally unaware. The objection should be overruled on these grounds alone. Additionally, St. John's objection is premised on a misunderstanding of both the scope of the case and the scope of the proposed Settlement. This Court certified for class treatment under Rule 23(b)(2) three practices which Facebook ceased either prior to or during the course of this litigation. St. John's complaints about the value of the settlement to the class are unfounded: Plaintiffs, through years of hard-fought, contentious litigation, were able to obtain significant concessions from Facebook and ultimately obtained a proposed Settlement that confirms and clarifies Facebook's cessation of the practices at issue, as well as Facebook's clear and explicit disclosure of the uses it is making of private message URLs going forward. Consent is a central issue of this case, and this Settlement allows users to make an informed decision about whether and what to share in their Private Messages on Facebook. In sum, the Settlement achieves and confirms significant business practice changes to, and disclosures of, Facebook's practices related to the use of URLs in Private Messages that address each of the three practices certified for class treatment by the Court and challenged in the Second Amended Complaint, benefiting the class now, without the inherent risks of continued litigation and without requiring class members to release any claims they may wish to pursue for monetary relief.

St. John's objections to Plaintiffs' counsels' fees completely elide the fact that Plaintiffs' counsel have agreed to a 50 percent negative multiplier in order to reach a settlement. This fact

[1] *See* https://cei.org/issues/class-action-fairness.

alone vitiates St. John's objections to Plaintiffs' counsels' requested fees. Nor has St. John established that any indicia of "self-dealing" are present here.

Finally, this Court, after an extensive discussion at the preliminary approval hearing, settled on a notice plan that goes significantly beyond what other courts have found is required where claims for monetary damages have not been released.

Despite years of extensive publicity given to this case (*see* Dkt. No. 233-2, listing dozens of news articles covering this case over a three-year period), this proposed Settlement drew no objections other than from an attorney employed by an organization whose primary mission is to object to class action settlements. Moreover, notice has been issued to the Attorneys General in all fifty states, the District of Columbia and all five permanently inhabited territories pursuant to the Class Action Fairness Act, and no governmental entity has raised objections or concerns about the proposed Settlement. As explained below, the proposed Settlement is fair, reasonable, and adequate. The objection should be overruled and final settlement approval granted.

II. ARGUMENT

A. The Court Certified Only an Injunctive Relief Class, and as such an Injunctive-Relief Only Settlement is Appropriate.

In repeatedly complaining of the "disproportion between attorneys' fees and purported class benefit," (Objection at 1), the gravamen of St. John's objection appears to ultimately be that Plaintiffs did not obtain monetary compensation for Facebook users subject to the challenged practices. *See, e.g.,* Objection at 16 ("the most telling sign of self-dealing in this settlement is that 'class counsel are amply rewarded' while 'the class receives no monetary distribution.'") (citations omitted). But Plaintiffs vigorously pursued, and this Court *declined to certify*, a damages class under Rule 23(b)(3) at the class certification stage; instead, the Court certified *only* an injunctive relief class under Rule 23(b)(2). Dkt. No. 192, Class Cert. Order, at 27. As such, much of St. John's argument and authority suggesting that a non-cash relief settlement is "suspect" is inapposite – Plaintiffs are not in a position to obtain cash relief for the class, despite their attempts to pursue the ability to do so at the class certification stage, and Plaintiffs protected St. John's and other class members' rights to pursue monetary claims by excluding such claims

from the classwide release. At least one court recently found an essentially identical objection meritless. *See Garber v. Office of Comm'r of Baseball*, No. 12-3704, 2017 WL 752183, at *4 (S.D.N.Y. Feb. 27, 2017) (finding objection to settlement meritless where "it objected to the settlement because it provided no damages when the Court had declined to certify a damages class; it objected to the attorneys' fees award for being 'excessive' only because the attorneys failed to secure damages, again ignoring that the Court had declined to certify a damages class").

Indeed, much of St. John's authority appears to be boilerplate drawn from other briefs and is irrelevant where only an injunctive-relief class has been certified. *See, e.g.*, Objection at 12 (citing *In re Dry Max Pampers Litig.*, 724 F.3d 713 (6th Cir. 2013) for the proposition that "[N]oncash relief … is recognized as a prime indicator of suspect settlements."). Contrary to St. John's suggestion, Plaintiffs did not "'abandon[] pursuit of a monetary recovery for the class' in favor of an injunctive relief-only settlement," (Objection at 12 (quoting *Grok Lines, Inc. v. Paschall Truck Lines, Inc.*, No. 14-8033, 2015 WL 5544504, at *7 (N.D. Ill. Sept. 18, 2015)), rather the *Court* held, after briefing and oral argument, that only injunctive relief may be sought on a class-wide basis in this case.

There is no indication in St. John's brief that she is aware that Plaintiffs sought, and the Court rejected, certification of a damages class. Nor does St. John provide any suggestion of how Plaintiffs could have pursued class-wide cash relief given the nature of the class certified. However, as St. John concedes, the Settlement provides that every class member (other than the named Plaintiffs) may still pursue an individual claim for damages (*see* Objection at 21)—damages which they would not have been able to obtain from this case, even if the case had gone to trial and Plaintiffs prevailed. As such, the Settlement "adequately balances fairness to absent class members and recovery for plaintiffs with defendants' business interest in ending th[e] litigation with finality." *Lee v. Glob. Tel*Link Corp.*, No. 15-2495, 2017 WL 1338085, at *7 (C.D. Cal. Apr. 7, 2017) (internal quotations and citation omitted). Particularly given the Court's statement that "many class members appear to have suffered little, if any, harm" (Dkt. No. 192, Class Cert. Order, at 27), an injunctive-relief only settlement is fair and appropriate. St. John's objection should be overruled on these grounds alone.

B. Facebook's Acknowledgement of Cessation of the Challenged Practices Provides Benefit to the Class.

In its Class Certification Order, the Court certified for class treatment the following three practices by Facebook: (1) "Facebook scans the users' messages, and when a URL was included, it would increase the "Like" counter for that URL;" (2) "Facebook scans users' messages, and when a URL is included, it uses that data to generate recommendations," and (3) "Facebook scans the messages, and when a URL is included, it shares that data with third parties so that they can generate targeted recommendations." Dkt. No. 192, Class Cert. Order, at 3-4. In its subsequent discovery ruling, the Court confirmed these three practices as the scope of Plaintiffs' claims for class consideration. *See* Dkt. No. 218 at 2. As described below, the Settlement Agreement achieves full injunctive relief that is tailored to the three practices at issue.

Facebook, as part of the Settlement Agreement, acknowledges in unambiguous terms that it has ceased engaging in the challenged practices. The details of those acknowledgements—for example, Facebook's past uses of EntShares to record Private Message Content, as well as Facebook's use of Private Message Content to inform its "Recommendations" feed (*see* Settlement Agreement at ¶ 40(a))—were not publicly known prior to this litigation, and were only revealed as a result Plaintiffs' extensive technical discovery and analysis of Facebook's Private Message system. Moreover, contrary to St. John's assertions, prior to entering into this Settlement Agreement, Facebook had not detailed the extent to which it made use of Private Message URL content during the class period, nor had it provided the clear and explicit assurances of cessation of *all* of the conduct described in the Settlement Agreement; thus the Settlement's acknowledgement provisions may provide valuable to guidance to class members that may choose to seek individual damages for past uses of their Private Message content. Combined with the enhanced disclosures discussed below, the Settlement achieves the twin aims of this litigation: assurance to the class that Facebook has ceased its past challenged uses of URLs in Private Messages, as well as future, transparent disclosure of further uses Facebook may make of such content. St. John incorrectly argues that the Settlement allows Facebook to continue to "intercept" Private Message contents in violation of ECPA (18 U.S.C. §§ 2510, et seq.) and CIPA

(Cal. Penal Code § 631). Combined with the enhanced disclosures, Facebook's future use of URLs in Private Messages would be clearly disclosed to class members and thus would comport with ECPA and CIPA.

C. The Enhanced Disclosures Provide Relief to the Class.

The Settlement requires Facebook to display the following additional language on its United States website for Help Center materials concerning messages within 30 days of the Effective Date: "We use tools to identify and store links shared in messages, including a count of the number of times links are shared." Dkt. No. 227-3, Settlement Agreement ¶ 40(d). This statement on Facebook's website unambiguously discloses the use of URLs sent in Private Messages, and allows class members as well future Facebook users to make informed decisions regarding what to share in Private Messages on Facebook. With this language, Facebook provides enhanced disclosures regarding the continued practice of internal logging and counting of URL links, while no longer engaging in the three uses certified for class treatment: sharing and using data derived from the URL processing via the Like Counter, Recommendations Feed, and the Insights Dashboard. *See id.* ¶ 40.

St. John makes no effort to explain why this enhanced disclosure on Facebook's website is "worthless" to the class; she does not deny that it constitutes a new and transparent disclosure of Facebook's use of URLs in Private Messages going forward, nor does she deny that it will allow users to make an informed choice regarding what to share in Private Messages, or whether to use Facebook's Private Message feature at all. Given that consent is a complete defense to Plaintiffs' ECPA and CIPA claims, these disclosures (along with the cessation of the challenged practices and disclosures discussed below) bring Facebook's business practices into compliance with the law, and allow Facebook users to decide whether to consent to allow Facebook to use the URLs they choose to send in Private Messages.

Courts have found such additional disclosures appropriate injunctive relief for the class in similar privacy cases. In an analogous recent case within this District, the court approved an injunction-only settlement founded in part on enhanced public disclosures. *In re Yahoo Mail Litig.*, No. 13-4980, 2016 WL 4474612, at *4 (N.D. Cal. Aug. 25, 2016) (Koh, J.), appeal

dismissed sub nom. *Cody Baker et al. v. Yahoo!, Inc.*, No. 16-16759 (Sept. 30, 2016) (approving settlement that included enhanced disclosures on Yahoo's Privacy Center Webpage which stated "Yahoo analyzes and stores all communications content, including email content from incoming and outgoing mail."). While in the *Yahoo* case the defendants agreed to process the class members' emails in a different manner, here, no such change in business practices can be effectuated as part of the settlement because, as Facebook acknowledges, *it already implemented the appropriate business practices changes* (i.e., cessation of the challenged practices) during the course of the litigation.

Moreover, Facebook implemented another significant change to its disclosures during the course of this litigation in a way that directly relates to the subject matter of this litigation. As the Settlement Agreement makes clear, during the course of this litigation, Facebook revised its Data Policy to state, inter alia, that Facebook collects the "*content* and other information" that people provide when they "*message* or communicate with others," and to further explain the ways in which Facebook may use that content. (Dkt. No. 227-3, Settlement Agreement ¶ 40(c) (emphasis added); Facebook Data Policy, §§ I-II.). These enhanced disclosures, enacted after the filing of this action and after the Court's ruling on the Motion to Dismiss, are among the benefits to class members of this litigation (*see id.*), and together with the additional forward-looking disclosures apprise class members of Facebook's use of their Private Message content.

St. John provides no suggestion of what a better injunctive relief-only settlement would have looked like in this case; she cannot, because the Settlement is specifically tailored to remedy the claims certified for injunctive class treatment by the Court. St. John ignores the two-prong analysis under ECPA and CIPA: both statutes (a) prohibit content interceptions (b) *without consent*. 18 U.S.C. §§ 2510, et seq.; Cal. Penal Code § 631. Plaintiffs cannot demand in the future that Facebook not engage in business practices that it fully discloses to its users in compliance with the law. Ultimately, Facebook has agreed to provide the injunctive relief sought on behalf of the settlement class—namely, it has implemented and confirmed substantial changes to both its business practices and to its disclosures and Help Center materials, which Plaintiffs

contend bring Facebook's business practices into compliance with their view of ECPA and CIPA. The substantive terms of the Settlement are fair, reasonable, and adequate.[2]

This case involves the fundamental right, codified in the ECPA and CIPA, to privacy in online communications; the importance of this right is manifest by the keen media attention in this case and other cases concerning data privacy (*see*, *e.g.*, Dkt. No. 233-2, Settlement Agreement, listing dozens of news articles covering this case over a three-year period).[3] As described above, the proposed Settlement provides assurance to those interested in how their private communications are used that Facebook is no longer engaging in the challenged practices, and requires Facebook to alter its public disclosures in order to apprise Facebook users of what it does with their private communications going forward. St. John's objection—bereft of any suggestion of what an appropriate settlement of this case would look like—evinces little understanding of, or even interest in, the technical issues underlying this case, or in the role consent plays with respect to the lawful use of electronic communications. While St. John may consider a transparent addition to the world's largest social network's public disclosures regarding how it uses such communications unimportant, the proposed Settlement is in fact an important step towards further transparency in the use of private communications over the Internet.

D. The Requested Attorneys' Fees and Costs are fair, Reasonable and Appropriate under the Circumstances.

1. Contrary to St. John's Objection, the Fee Request Includes No Indicia of "Self-Dealing."

Contrary to St. John's assertions, the settlement negotiations in this action have *none* of the indicia of "self-dealing." First, in contrast to the cases upon which St. John relies, Facebook agreed not to take a position on Plaintiffs' fee motion only (a) after Plaintiffs agreed to request

[2] Because the substantive terms of the Settlement are fair, reasonable, and adequate, St. John's arguments regarding the adequacy of representation—based on the purported inadequacy of the Settlement—are irrelevant and should be rejected.

[3] *See also* Timothy J. Seppala, Facebook facing class-action lawsuit over unauthorized message scanning, Engadget, available at https://www.engadget.com/2014/12/25/facebook-class-action-privacy-lawsuit/ (stating the results of this case "will almost assuredly have big effects for how we communicate on the web moving forward, and you can bet we'll be following them closely in the coming year").

only *half* their lodestar and provided Facebook with monthly summaries of counsels' timekeeping, (b) in a mediator's proposal before a well-respected mediator, (c) after the substantive components of the settlement had been resolved across four mediation sessions before two mediators over several months, (d) at the tail-end of three years of zealous and at times acrimonious litigation, after class certification, and just weeks before the close of fact discovery. Put simply, Class Counsel agreed to a significant 50 percent reduction in lodestar to bring this litigation to an end once the substantive components of the settlement had been resolved and to avoid a protracted fee dispute that would have been contrary to the class's interests. This is not "clear sailing" but rather strong headwinds on tumultuous waters.[4]

Second, St. John's allegation that the fee is disproportionate to the monetary relief once again evidences St. John's misunderstanding of the settlement and the history of this litigation. Plaintiffs and Class Counsel zealously fought for class certification of monetary claims under Rule 23(b)(3); however, this Court denied certification. It follows from that ruling that there is no b(3) class to represent, no monetary relief, no common fund and no release of monetary claims. A comparison of the requested attorneys' fee to a non-existent common fund in this setting signals either disingenuousness or ignorance. Nor is it constructive or instructive to compare the fee request to some monetary valuation of the injunctive relief. The proper analysis is that set forth in Plaintiffs' Fee Motion[5]—a detailed lodestar analysis under which Class Counsel requests a modest 50 percent of their lodestar and reimbursement of expenses.

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[4] *Milano v. Interstate Battery Sys. of Am., Inc., et al.*, No. 10-2125, Dkt. Nos. 106 & 107 (N.D. Cal. July 5, 2012) (Wilken, J.) demonstrates that no self-dealing occurred in this matter. There, as in this matter, counsel sought settlement of a class with non-monetary relief under Federal Rule 23(b)(2). *Id.*, Dkt. No. 107 at 2-4. The court, acknowledging the "possibility of collusion among the negotiating parties," noted that the parties "conducted Court-ordered mediation before an experienced former California judge," which "occurred after the parties had conducted significant discovery and assessed the merits of the case." *Id.*, Dkt. No. 106 at 5. The court also noted that "the parties reached agreement on all substantive terms before discussing attorneys' fees." *Id.* As such, the court found the settlement to be "fair, reasonable, and adequate." The court ultimately awarded class counsel $1,054,838.25 in fees based off the "lodestar value of Class Counsel's services." *Id.*, Dkt. No. 107, at 2.

[5] *See* Plaintiff's Notice of Motion, Unopposed Motion and Memorandum of Points and Authorities in Support of Motion for an Award of Attorneys' Fees and Costs and Service Awards, at 7-16, Dkt. No. 238.

Third, contrary to St. John's allegations, there is no "kicker." Again, because there is no (b)(3) class, no monetary relief, no monetary release and thus no common fund, Facebook has not paid any money into a common fund that could revert or "kick" back to Facebook. Instead, Facebook simply has agreed to pay the amount ordered by the Court at a future date (30 days from the Effective Date).

2. St. John's Objection Further Demonstrates that the Requested Fees are Fair, Reasonable and Appropriate.

Consistent with this Court's Standing Order on Procedural Guidance of Class Action Settlements,[6] Class Counsel's Fee Motion and supporting declarations provided (1) detailed lodestar information, (2) the billing rate for each professional, (3) evidence that these rates are customary, in accordance with prevailing market rates and have been approved by other courts in this and similar markets, (4) the number of hours spent on fourteen categories of activities, and (5) a detailed chronological narrative of Class Counsel's work.

St. John posits two "concerns" about this detailed documentation. First, St. John suggests that the requested blended rate is too high. Class Counsel stand by the blended rate at full lodestar value in a case of this legal and technical complexity. However, a detailed response is unnecessary because St. John's objection actually supports a *higher* attorneys' fee than that requested here. St. John again ignores that Plaintiffs, to avoid a protracted fee dispute, agreed to request only 50 percent of their actual lodestar, resulting in a blended rate of $289.64. This blended rate is *significantly* lower than the blended rate – ranging from $366.87 to $477 – requested *and awarded by the Court* in each of the four cases relied upon by St. John.[7] Accordingly, to the extent it has any value, St. John's "objection" supports a *higher* attorneys' fee than that sought by Plaintiffs.

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[6] Available at http://www.cand.uscourts.gov/pjhorders.

[7] *In re Quaker Oats Labeling Litig.*, No. 10-502, 2014 WL 12616764, at *1 (N.D. Cal. July 29, 2014) (Seeborg, J.) (Counsel requested and Court approved $437.54); *Bruno v. Quten Research Inst., LLC*, No. 11-173, 2013 WL 990495, at *4 (C.D. Cal. Mar. 13, 2013) (Counsel requested and Court approved $366.87); *Nguyen v. BMW of N. Am. LLC*, No. 10-2257, 2012 WL 1380276, at *3 (N.D. Cal. Apr. 20, 2012) (Illston, J.) (Counsel requested and Court approved $470); *Gabriel Techs. Corp. v. Qualcomm Inc.*, No. 8-1992 AJB, 2013 WL 410103, at *9 (S.D. Cal. Feb. 1, 2013) (Counsel requested and Court approved $447).

Second, St. John raises a "concern" that a portion of any fee awarded may be shared with counsel for former plaintiff David Shadpour who abandoned this litigation. This concern is unwarranted. Only court-appointed Class Counsel Lieff Cabraser and Carney Bates moved for attorneys' fees and costs; only Class Counsel filed detailed documentation of their lodestar, hourly rates, experience and expenses; and only Class Counsel—both of whom contributed significant hours and expenses over the entire course of the litigation—will receive any attorneys' fees or cost reimbursements that may be awarded by this Court. Plaintiffs do not oppose a judicial prohibition on distribution of fees beyond Class Counsel but see no reason for it.

E. This Court Did Not Abuse its Discretion by Requiring the Executed Notice.

This Court in no way abused its discretion by requiring the notice plan set forth in the Preliminary Approval Order. In this b(2) context, courts routinely determine that no notice is required. Focusing on the Northern District of California, several courts have ruled that an injunctive relief settlement, with no release of monetary claims by absent class members, does not require any class notice. For example, Judge Tigar recently held that no notice was required to members of the settlement class where, under the settlement, the defendant agreed to change its labeling practices, but monetary claims of class members were not released, nor would class members have the right to opt out. *Lilly v. Jamba Juice Company*, No. 13-2298, 2015 WL 1248027 at *9 (N.D. Cal. Mar. 18, 2015) (Tigar, J.). In another (b)(2) injunctive settlement case, Judge Tigar again observed that "notice 'is not uniformly required'" in settlements of this nature. *Hart v. Colvin*, No. 15-623, 2016 WL 6611002 at *9 (N.D. Cal. 2016) (Tigar, J.) (quoting *Green v. Am. Express Co.*, *supra*, 200 F.R.D. 211, 212-213 (S.D.N.Y. 2001)). In another recent case, Judge Koh determined notice was not necessary where the relief was injunctive and class members were still free to pursue monetary claims. *Yahoo Mail*, 2016 WL 4474612 at *5 ("because Rule 23(b)(2) provides only injunctive and declaratory relief, 'notice to the class is not required'") (quoting *Lyon v. United States Immigration and Customs Enforcement*, 300 F.R.D. 628, 643 (N.D. Cal. 2014) (Chen, J.)).

The Southern District of California also has followed this approach in the context of b(2) settlements without release of monetary claims. *See Kline v. Dymatize Enters.*, No. 15-2348, 2016

WL 6026330 at *6 (S.D. Cal. Oct. 13,2016) (foregoing notice because the class only released claims for injunctive relief); *Bee, Denning, Inc. v. Capital Alliance Group*, No. 13-2654, 2016 WL 3952153 at *9 (S.D. Cal. July 21, 2016) ("Because the relief requested in a (b)(2) class is prophylactic, enures to the benefit of each class member, and is based on accused conduct that applies uniformly to the class, notice to absent class members and an opportunity to opt out of the class is not required" therefore "no notice is required for a Rule 23(b)(2) class action settlement").

Federal courts outside of California have reached the same conclusion. *See, e.g., Selby v. Principal Mut. Life Ins. Co.*, No. 98-5283, 2003 WL 22772330 (S.D.N.Y. Nov. 21, 2003) (foregoing notice where the only thing that class members could not do as a result of the settlement was sue for alternative injunctive or declaratory relief); *Foti v. NCO Fin. Sys. Inc.*, No. 4-707, Dkt. No. 71, at 8-9 (S.D.N.Y. Feb. 20, 2008) (foregoing notice where class members maintained the right to pursue statutory damages and the settlement was injunctive in nature); *Jermyn v. Best Buy Stores, L.P.*, No. 8-214, 2012 WL 2505644 at *3 (S.D.N.Y. Jun. 27, 2012) (foregoing notice where the injunctive settlement "preserve[d] and [did] not release class members' monetary claims); *In re Subway Footlong Sandwich Mktg. and Sales Practices Litig.*, No. 13-md-2439, 2015 WL 12616163 (E.D. Wisc. Oct. 2, 2015) (foregoing notice where class members were only giving up injunctive claims, the injunctive relief gave class members the relief sought, no collusion was present, notice to a huge portion of the U.S. population would be expensive, and there was significant press surrounding the issue).

St. John ignores all these recent cases on point. None of the cases St. John cites involve (b)(2) settlements with injunctive relief systemically impacting all class members the same, with no release of monetary claims. Instead, all St. John's authority is inapposite as the cases either (a) do not even involve class actions,[8] (b) involve certification of non-(b)(2) classes seeking monetary relief,[9] (c) involve the settlement of (b)(2) classes *with* releases of monetary claims,[10] or

[8] *See Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306 (1950) (involving sufficiency of notice sent to beneficiaries on judicial settlement of accounts by trustee of a common trust); *Jones v. Flowers*, 547 U.S. 220, 229-30 (2006) (involving sufficiency of notice of a tax sale of home).

[9] *See In re Katrina Canal Breaches Litig.*, 628 F.3d 185,197 (5th Cir. 2010) (involving certification of a limited fund mandatory class under 23(b)(1)(B)); *Larson v. AT&T Mobility LLC*, 687 F.3d 109, 122-31 (3d Cir. 2012) (involving certification of a 23(b)(3) class); *In re Motor Fuel*

Footnote continued on next page

(d) involve (b)(2) settlements from decades past in completely different contexts (school desegregation and discriminatory hiring practices) where the prospective relief impacts individual class members differently.[11]

III. CONCLUSION

For the foregoing reasons, Plaintiffs and Class Counsel respectfully request that the Court enter an Order overruling St. John's objection, awarding the requested attorneys' fees and expenses and Plaintiff service awards, and granting final approval of the Settlement.

Dated: July 10, 2017

By: */s/ Hank Bates*

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Temperature Sales Practices Litig., 279 F.R.D. 598, 617 (D. Kan. 2012) (involving certification of both 23(b)(2) and 23(b)(3) classes); *Allen v. Similasan Corp.*, No. 12-376, 2017 WL 1346404, at *2 (S.D. Cal. Apr. 12, 2017) (involving certification of 23(b)(3) class); *Hendricks v. Starkist Co.*, No. 13-729, 2016 WL 5462423, at *3 (N.D. Cal. Sept. 29, 2016) (Gilliam, J.) (involving certification of 23(b)(3) class); *Fernandez v. Victoria Secret Stores, LLC*, No. 6-4149, 2008 WL 8150856, at *3 n.20 (C.D. Cal. Jul. 21, 2008) (involving certification of 23(b)(3) class).

[10] *See Felix v. Northstar Location Servs.*, 290 F.R.D. 397, 408-09 (W.D.N.Y. 2013) (involving 23(b)(2) class with release of monetary claims); *Hecht v. United Collection Bureau, Inc.*, 691 F.3d 218, 225 (2d Cir. 2012) (involving 23(b)(2) class with release of monetary claims).

[11] *Mendoza v. United States*, 623 F.2d 1338, 1350 n.16 (9th Cir. 1980) (involving 23(b)(2) class of individuals seeking to desegregate a school); *Mandujano v. Basic Vegetable Prods., Inc.*, 541 F.2d 832, 835 (9th Cir. 1976) (involving 23(b)(2) class of individuals seeking to change discriminatory hiring practices).

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