

Exhibit 1

UNITED STATES DISTRICT COURT **CERTIFIED COPY**
NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Phyllis J. Hamilton, Judge

Matthew Campbell, Michael)	Motion for Preliminary Approval for Class Action Settlement
Hurley, and David Shadpour,)	
)	
Plaintiffs,)	
)	
VS.)	
)	
Facebook, Inc.,)	
)	
Defendant.)	
_____)	
)	
)	

NO. C 13-05996PJH
Pages 1 - 32
Oakland, California
Wednesday, April 19, 2017

REPORTER'S TRANSCRIPT OF PROCEEDINGS

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(APPEARANCES CONTINUED NEXT PAGE)

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Proceedings reported by electronic/mechanical stenography;
transcript produced by computer-aided transcription.

A P P E A R A N C E S (CONT'D.)

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--o0o--

1 Wednesday, April 19, 2017

9:16 a.m.

2 P R O C E E D I N G S

3 **THE CLERK:** Calling civil case 13-05996, Campbell,
4 et al. versus Facebook, Inc.

5 Counsel, please step forward and state your appearances.

6 (Pause in the proceedings.)

7 **THE COURT:** All right.

8 **MR. BATES:** Good morning. Hank Bates with Carney
9 Bates & Pulliam on behalf of plaintiffs and the injunctive
10 relief class.

11 **THE COURT:** Good afternoon. Good morning.

12 **MR. JESSEN:** Good morning, Your Honor. Joshua Jessen
13 from Gibson, Dunn & Crutcher on behalf of the defendant
14 Facebook. I'm joined by my colleagues Chris Chorba and Jeana
15 Bisnar Maute.

16 **THE COURT:** All right. Good morning.

17 **MR. CHORBA:** Morning, Your Honor.

18 **THE COURT:** All right. This matter is also on for
19 approval preliminary approval of class action settlement that
20 you all have reached.

21 Counsel?

22 **MR. BATES:** Yes, Your Honor. I can address questions
23 or I can sort of walk through how we got here and are in the
24 settlement, however is your preference.

25 **THE COURT:** Well, you've outlined how you got through

1 settlement. There -- I have just a couple of issues --

2 **MR. BATES:** Okay.

3 **THE COURT:** -- with respect to it. This -- I mean, I
4 certified only an injunctive relief class. There's only
5 injunctive relief that's at issue here.

6 **MR. BATES:** Correct, Your Honor.

7 **THE COURT:** There are no damages at issue. You all
8 have arrived at a mutually agreeable position with respect to
9 the challenged uses that Facebook was making of the -- of the
10 information. I think that's reasonable. I mean, that's what
11 you were seeking in the case.

12 And I find that the settlement on its face is certainly
13 within the ballpark of a settlement that the court would
14 ultimately find adequate and reasonable.

15 I do however have some issues, though. As I indicated in
16 the previous settlement, clearly, attorneys' fees is going to
17 have to be justified in the case at the time that you submit a
18 motion for fees, as well as the incentive awards that you're
19 seeking for the named plaintiffs.

20 You know, I had some real issue as to whether or not there
21 was any actual harm in this case, and so I'll -- I'm not
22 exactly sure what, except perhaps litigation participation,
23 the named plaintiffs would be deserving of some sort of a
24 monetary award.

25 I do see that they are waiving their rights to pursue any

1 monetary damages against Facebook, whereas the putative class
2 is -- is not --

3 **MR. BATES:** Correct, Your Honor.

4 **THE COURT:** -- waiving those rights. And that, I
5 guess, might be worth something.

6 **MR. BATES:** We can address that in the --

7 **THE COURT:** But you'll address that in the papers.

8 **MR. BATES:** -- in the papers, but the general -- they
9 were very involved in this litigation with long depositions,
10 document production, interrogatory responses, including some
11 of their communicates also being deposed.

12 **THE COURT:** Their depositions were taken?

13 **MR. BATES:** Yes.

14 **THE COURT:** Okay.

15 **MR. BATES:** Yeah, there were -- and we'll address all
16 that in the final papers. And we've asked for the 5,000
17 apiece, which is the bench mark generally in the Ninth
18 Circuit.

19 **THE COURT:** Right. Okay.

20 **MR. BATES:** And we'll also, of course, address the
21 fee issue in more detail at that time as well.

22 **THE COURT:** Okay. Since it's an injunctive relief
23 case only, I assume you'll be seeking a Lodestar --

24 **MR. BATES:** Correct, Your Honor.

25 **THE COURT:** -- award in the case?

1 Okay. All right. Then we'll take a closer look at that
2 time.

3 All right. So the real issue remaining is -- well, there
4 are a couple of minor issues. But the real issue is the
5 question of notice to the class.

6 **MR. BATES:** Yes, Your Honor.

7 **THE COURT:** I -- I'm not persuaded that no notice
8 should be given to the class. I mean, notwithstanding that it
9 it's a (b) (2) class and class certification doesn't have to be
10 noticed to the class, there's nothing that relieves, I think,
11 the parties from notifying the class of an actual settlement
12 or of the fact that the plaintiffs' counsel will be seeking
13 fees in the case. Both section 23(E) and (H) anticipate that
14 a -- or require that the class be notified before either of
15 those things happen so that they can submit objections.

16 Frankly, I don't know how I would entertain any objections
17 unless we gave notice to the class in some fashion.

18 Granted, we don't know how large the class is. You all
19 have never been able -- required to pinpoint a number, but it
20 seems to me that some form of notice is necessary in order to
21 fill our responsibilities under rule 23(E) and (H).

22 **MR. BATES:** Well, Your Honor, it's certainly within
23 our discretion to require notice. In terms of how we got to
24 the decision not to propose notice, we took a very hard look
25 at it, and, frankly, all of the cases that have addressed it

1 in the Northern District and then in addition to cases in the
2 other California districts and a string of cases in the
3 Southern District in new York all did not require notice in a
4 (b) (2) context for a variety of reasons, so we didn't have
5 case law to bring to you to say notice should be required in
6 the --

7 **THE COURT:** I don't need case law.

8 **MR. BATES:** You're exactly right.

9 **THE COURT:** The statute -- I mean, the rule says
10 they're supposed to get notice so that they can file an
11 objection to fees if they wish to or otherwise object to
12 the -- the class. I mean, haven't you built in an objection
13 procedure?

14 **MR. BATES:** We have, Your Honor.

15 **THE COURT:** You have. So how are people supposed to
16 object if they don't know that there's going to be a
17 settlement?

18 **MR. BATES:** There's been a fair amount of media
19 attention on this case and -- and there would be some notice
20 through that.

21 In terms of -- of providing notice, in terms of the way
22 the courts have looked at it, in terms of if we're going to --
23 if, indeed, the court is requiring notice in this context,
24 we're going to have to figure out what type of notice we're
25 going to do.

1 **THE COURT:** Sure.

2 **MR. BATES:** You know, the courts have looked at it,
3 and what they've balanced is when it's injunctive relief only,
4 when injunctive relief doesn't require any --

5 **THE COURT:** Waiver.

6 **MR. BATES:** -- affirmative action of any type.

7 **THE COURT:** Or waiver of damages.

8 **MR. BATES:** Or waiver. And of course, most important
9 thing is the -- the express carving out of any claims for
10 monetary damages from the release. And then that's
11 counter-balanced with the cost of notice in terms of -- on
12 the -- on the detriment side.

13 **THE COURT:** Well, what -- I mean, first of all, you
14 have no idea who the -- who all the class members are. So how
15 difficult would it be to send out some sort of Internet
16 notice? I mean, how expensive would that be?

17 **MR. BATES:** In terms of --

18 **THE COURT:** I mean, I imagine that Facebook -- can't
19 you just post something and send it to everyone? Don't you
20 have something like a list serve?

21 **MR. JESSEN:** That's actually a very onerous process,
22 Your Honor, to contact everyone. I mean, first of all, it
23 is -- we don't really know who the class members are. And --
24 But even assuming that -- but that's sort of one hurdle, is
25 how do we identify these folks because there really is no

1 administratively feasible way to determine who during the
2 class period sent a message with a URL that was turned into an
3 attachment. So that's one issue, is how do you identify these
4 folks.

5 There's really no good way to do it. But even if we
6 could, sending out a massive number of emails or providing
7 some other sort of notification is a very significant
8 undertaking. It would be expensive. It would be terribly
9 time-consuming.

10 Go ahead. Sorry.

11 **THE COURT:** What about some sort of Internet
12 advertising?

13 **MR. JESSEN:** Yeah, I think --

14 **THE COURT:** Isn't that what they did in the *Yahoo!*
15 case?

16 **MR. JESSEN:** Yeah. And allow me to address -- Excuse
17 me, Your Honor -- a couple points. They did do that in the
18 *Yahoo!* case, although Judge Koh in her order granting approval
19 of that settlement acknowledged that for a (b) (2) settlement
20 with injunctive relief only and no damages relief, that notice
21 is not required.

22 And, in fact, if -- obviously, if Your Honor looks at
23 Federal Rule Civil Procedure 23(c) (2), you know, the rule says
24 for any class certified under 23(b) (1) or (b) (2), the court
25 may direct appropriate notice to the class.

1 **THE COURT:** But that's notice of certification.

2 That's not notice of settlement. Look at Section E and H.

3 **MR. JESSEN:** I've looked at those, Your Honor, and
4 there have been -- As the plaintiff cite in their motion for
5 preliminary approval, there have actually been several cases
6 including in the Northern District that have considered this
7 very issue and -- and we've cited them. One of the cases is
8 the *Lilly vs. Jamba Juice* case.

9 **THE COURT:** Sure. I don't agree with those, though.
10 And there isn't any Ninth Circuit authority one way or the
11 other on how to interpret those two provisions of Rule 23.

12 **MR. JESSEN:** Agree that there's no Ninth Circuit
13 authority, Your Honor.

14 One point that I would make, and Your Honor acknowledged
15 this in your order for class certification. We had argued
16 that ascertainability is a requirement for a (b) (2) class.
17 The court, you know, rejected that argument. But part of Your
18 Honor's rationale in the class certification order was, unlike
19 in a Rule 23(b) (3) class, where people have a right to opt
20 out, and -- and that's not the case and -- and mandatory
21 notice is required, that's not the case, as I think the
22 Supreme Court said in the *Dukes* case in a Rule 23(b) (2) class.
23 So I think, you know --

24 **THE COURT:** But once again, that's not settlement
25 notice or the notice that is required to give before

1 attorneys' fees are considered and granted.

2 It's not the same thing.

3 **MR. JESSEN:** I don't -- I don't know that the courts
4 have drawn that distinction, Your Honor. I think -- I think
5 Mr. Bates is right that the court does have discretion not --

6 **THE COURT:** "Newberg on Class Actions" has drawn that
7 distinction even if the courts haven't.

8 **MR. JESSEN:** Yeah. I think if I could raise a few
9 other points, Your Honor, that -- that are significant.
10 Number one, there has actually been a lot of media and
11 publicity around this case from day one. It continued
12 actually when we filed -- when the parties filed a settlement
13 agreement. The settlement was reported in numerous news
14 outlets.

15 Number two, we have -- is we have provided notice to --
16 pursuant to CAFA to all attorney generals in all 50 states, to
17 the U.S. Attorney General, and territories. So notice has
18 been dispersed pretty widely.

19 As a practical matter, Your Honor, first of all, notice
20 here would be expensive. It'd be very difficult to figure out
21 the appropriate kind of notice.

22 But secondly, it's unclear what the point of the notice
23 would be. No one can opt out of this class. It's an
24 injunctive-relief-only class. They're not -- No one -- No one
25 is releasing damages claims.

1 **THE COURT:** But they can object. They can object
2 that this declaratory relief or the injunctive relief doesn't
3 go far enough. They can object to that. They can object to
4 any amount of fees that are being sought.

5 **MR. JESSEN:** I -- I think, Your Honor -- this gets to
6 the other point I was going to make, which is our fear is
7 notice in this context is just going to create confusion.

8 Typically when people get noticed, they think they should
9 do something with it. Here, we're dealing with practices --
10 the sort of three uses that Your Honor certified in her class
11 certification order that -- that ceased many years ago, in
12 2012 and 2014 respectively.

13 And so we anticipate -- it's unclear sort of what the
14 notice would say, but I think it's going to create a lot of
15 confusion. And since these class members don't have a right
16 to opt out, they don't -- they're not releasing damages
17 claims. We would -- In all likelihood, anything Facebook
18 does, Your Honor, gets significant publicity.

19 And we don't to have infrastructure to answer questions
20 that are going to inevitably come up if someone gets notice,
21 saying, by the way, there are these historical practices --

22 **THE COURT:** Well, what is the point of, then,
23 allowing the class an opportunity to make objections if we're
24 not going to tell them that something's going on with this
25 class that they've been hearing about.

1 **MR. JESSEN:** There --

2 **THE COURT:** What's the point?

3 And we are required to give them notice of attorneys' fees
4 that are being sought. I assume there's agreement that,
5 indeed, the class is entitled to object to that if they wish.

6 **MR. BATES:** Yes, Your Honor. And, again --

7 **THE COURT:** So how do we notify them of that?

8 **MR. BATES:** And I've -- I understand your perspective
9 Your Honor, frankly when we start to look at this, we started
10 from your perspective as a sort of default position that
11 notice should be provided.

12 It was only after we read all the case law and found no
13 case consistent with that position. That does not mean that
14 court does not have discretion to require it. And in terms
15 of, you know, the options for some type of notice in this
16 context. And -- In the Yahoo! case, although the court noted
17 that notice wasn't required the parties had proposed notice.

18 And in part, they had done it there because of the
19 different nature of the case. It was a -- It was a non-user
20 class as opposed to a user class, so they were outside the
21 loop of the terms of service. It a way of providing
22 disclosures to the class that -- since they were outside the
23 terms of service, communication, right?

24 And that was a part of -- and what they tell in that
25 class, they did do Internet advertising. I think the cost was

1 around -- think it exceeded a hundred thousand dollars, around
2 there. And in order to put banner ads that would provide
3 general --

4 **THE COURT:** And that's probative in this case? I
5 mean, Facebook is a multi-billion-dollar company. You're
6 not -- I mean, hundred thousand dollars does not seem to me to
7 be a prohibitive amount of money to spend on some notice. But
8 I'm more concerned --

9 I agree they can't opt out of the class. In fact, some of
10 procedures that you've agreed to cease doing you'd stopped
11 even before you all had entered into a settlement, at least
12 that was the representation.

13 **MR. JESSEN:** Correct.

14 **THE COURT:** Correct. So okay. They can't opt out.
15 Whether or not they should be able -- the class members should
16 be able to object that the relief should be broader is
17 probably kind of a small thing. But it is an issue but not a
18 major issue.

19 But the attorneys' fees is -- is a significant issue. In
20 fact, most -- the vast majority of objections I get are that
21 attorneys' fees are inappropriate given the -- the nature of
22 the settlement, the amount of the settle, et cetera. And I
23 think that class members -- even class members who can't do
24 anything about the relief that's been agreed to have a right
25 to assert those objections.

1 So that's my main concern.

2 **MR. BATES:** Okay.

3 **THE COURT:** Complying with 23(e). I how -- I think
4 it's 23(e). How are we supposed to do that? How are you all
5 supposed to do that?

6 **MR. JESSEN:** So --

7 **THE COURT:** So if you don't want to confuse the class
8 members with giving them details of the practices, et cetera,
9 we still have to tell them that fees are going to be sought in
10 "X" amount, and they have "X" amount of time to object.

11 **MR. BATES:** Yeah, one -- I mean, the -- there is a --
12 a significant concern in terms of confusion. I think in terms
13 of -- we'd have to discuss in terms of what the content would
14 be. I find even when I've -- when send out notice in a case
15 and it's simply notice of class certification as opposed to
16 notice of a -- of a class settlement, you get lots of calls
17 'cause people expect to think they need to do something. You
18 know, either -- either make a claim or be on the look-out for
19 a check.

20 Most calls you get is, when do I get my money type calls,
21 'cause there is a sense when you get something, it requires an
22 action by you. So I think to the extent that if we went down
23 the road of notice, if it were more focused on potentially the
24 fee amount, the types of things that -- that they would have
25 an interest in participating.

1 **THE COURT:** It can be very -- It's a very simple
2 notice. I mean, the case has been on file for a couple of
3 years. You simply notify the class that the parties have
4 settled it. Facebook has agreed to do -- you can describe it
5 in any way in which you wish. And you as a class member need
6 do nothing. Everyone who uses Facebook is going to enjoy the
7 benefit of whatever it is Facebook has agreed to do.

8 However, for the effort and the -- the litigation that was
9 undertaken in order to achieve this, the plaintiffs' lawyers
10 are going to be seeking fees. This is the amount. Facebook
11 has agreed to pay, what, up to a certain amount. Do you have
12 an objection to that?

13 **MR. BATES:** And the service award.

14 **THE COURT:** Right. So what's -- what's hard about
15 that?

16 **MR. JESSEN:** Yeah, I think a couple points, Your
17 Honor. I mean, I do think that the court does have discretion
18 here. And if you look at the text -- and I agree there's a
19 little bit of tension between 23(c)(2) and 23(e). 23(c)(2)
20 says very clearly the court may direct notice, "may," which
21 Judge Koh again, even though the parties in *Yahoo!*, which was
22 a case involving people who didn't use Yahoo! mail, even
23 though they agreed to provide notice -- Judge Koh acknowledged
24 in that order, even in the context of settlement, notice is
25 not required for a (b)(2) settlement with injunctive relief

1 only and -- and no damages release. Okay?

2 23(e) does say the court must -- this is regarding
3 settlement. The court must --

4 (Off-the-record discussion.)

5 **MR. JESSEN:** The court must direct notice in a
6 reasonable manner to all class members who would be bound by
7 the proposal. Okay?

8 And here, again, it's a mandatory (b)(2). There's --
9 They're not -- They're not sacrificing any of their
10 substantive rights, Your Honor, as the court in the *Lilly vs.*
11 *Jamba Juice* case acknowledged -- and I'm quoting from page 9
12 of the opinion. I'm happy to provide the cite even if --
13 because even if notified of the settlement, the settlement
14 class would not have the right to opt out from the injunctive
15 settlement and the settlement does not release the monetary
16 claims of class members, the court concludes the class notice
17 is not necessary.

18 And, again, I'll go back to your honor's class
19 certification opinion, which is docket 192, on pages 8 and 9,
20 the court specifically noted that in a (b)(2) class, in -- in
21 determining that ascertainability was not a requirement, the
22 court cited *Dukes* and -- which -- and I'm quoting the court's
23 opinion, quoting *Dukes*, the procedural protections attending
24 the B3 class, predominance, superiority, mandatory notice, and
25 the right to opt out are missing from (b)(2), not because the

1 rule considers them unnecessary but because it considers them
2 unnecessary to a (b)(2) class. So this is an important
3 distinction, Your Honor. I don't think the court does have
4 discretion here to not award it.

5 **THE COURT:** But I've already decided I'm going to
6 require notice at least of the fees so that there can be
7 objections. It seems a meaningless act to set aside time for
8 parties to object to something they've received no notice of.

9 **MR. JESSEN:** I disagree on that point, Your Honor,
10 for a couple reasons. Number one, the case has received
11 wide -- widespread publicity, including the settlement
12 agreement. I can submit to Your Honor 12 articles filed
13 with -- published within a day or two after the settlement.

14 Number two, we have provided notice to the attorney
15 generals. And the rule under CAFA, they have to have an
16 opportunity to object. Okay? So it's not as if not providing
17 other notice in this context doesn't have a meaning. It does
18 have a meaning, for the attorney generals to object.

19 Number three, there are a lot of people monitoring this
20 case through the ECF, Your Honor. And people who are aware of
21 it are aware of the proceedings based upon the information in
22 the public docket.

23 So there -- there is -- and I will say -- I want to make
24 another point, Your Honor. In the *Yahoo!* case, when they did
25 provide this Internet notice -- again, totally different case

1 because that was a case concerning non-Yahoo! users.

2 You could see even though (b)(2), our position is you
3 don't have to provide notice in a (b)(2) case with injunctive
4 relief only and no damages relief. In the context where the
5 class is people who don't use the product, in that case,
6 Yahoo! mail, you could understand they wanted to sort of get
7 this out there.

8 Our case is completely different because everyone in this
9 case is a Facebook user. Part of the -- part of the relief
10 we've acknowledged in this case is we have updated our data
11 policy. Okay? We've enhanced the data policy. And we've
12 also agreed to put additional language on the website. Okay?

13 Everyone who uses Facebook, first of all, is bound by that
14 policy and gets notice of it, okay? So they do get notice in
15 that context, and that information is available to them on the
16 website. Okay.

17 So we're fundamentally differently situated from -- from
18 the parties in *Yahoo!*. But I will say that in the *Yahoo!*
19 case, even after providing extensive notice, they had one
20 objector, a professional objector. The objection was
21 overruled.

22 And, again, in this case, Your Honor, it -- it -- it -- I
23 think it would -- it's not required. It would sow confusion.
24 And if I could make one -- one final point, Your Honor --

25 **THE COURT:** So are you suggesting, though, that in

1 class action settlements, we don't give notice, particularly
2 if it's a (b) (2) class -- but we don't give notice because the
3 objections are rare and we rarely get -- I've never received
4 more than a dozen in any one case.

5 **MR. JESSEN:** No, Your Honor. I'm -- I'm not
6 suggesting that. I'm just saying as a practical matter even
7 in that case when they didn't have to provide notice and they
8 did, they had one objection.

9 In our -- I think you have to look at every -- it's not as
10 if there would not be (b) (2) cases where notice would be
11 appropriate. I just think that our particular case is not one
12 of those. It's going to be -- Your Honor says, well, it may
13 only be a hundred thousand dollars. Your Honor, we've
14 litigated this case extensively for three years. You know,
15 we've -- it's been an expensive case to litigate, and -- and
16 additional money on top of that is problematic.

17 We actually -- And, frankly, Your Honor, if the court does
18 require --

19 **THE COURT:** Well, I'm not suggesting that Facebook
20 alone bear the costs.

21 **MR. JESSEN:** Understood, Your Honor.

22 As a practical matter, this is -- I mean, this --
23 requiring notice in this context -- again, we're dealing with
24 historical practices that ceased many years ago. We've
25 updated the data policy which everyone at Facebook gets

1 notified about. And it's on the website, okay? In that
2 context, notice is likely to confuse people. It's likely to
3 lead to an influx of inquiries to the company that we're not
4 set up to handle.

5 And, frankly, Your Honor, it -- it has the potential to
6 jeopardize the settlement. We have built into the settlement
7 agreement a provision where if certain changes are made to the
8 agreement, the parties can -- can not go forward with the
9 agreement. And one of those is the provision of notice
10 because we don't think it's required, and we don't think it's
11 appropriate in this context.

12 **THE COURT:** Well, I don't think it's necessarily
13 appropriate for you all to bargain away the court's right to
14 require notice under threat that the settlement won't -- won't
15 come to fruition if the court orders that notice be made.

16 **MR. CHORBA:** Your Honor, Chris Chorba. May I address
17 this issue just very briefly? I think Mr. Jessen has done a
18 fine job, and Mr. Bates have (sic) as well articulating our
19 position.

20 And I think Your Honor's made clear that you're inclined
21 to exercise your discretion to require notice.

22 I would like to, if possible, just explore -- I mean, this
23 is something we'll have to discuss with our client. This is
24 something we'll want to meet and confer with plaintiffs about.
25 But -- And I'm happy to submit this, but in another case that

1 we had before Judge Chen just last year, we had an extended
2 discussion with the court. What Judge -- And it was another
3 (b) (2) only class, no release of damages.

4 Judge Chen exercised his discretion in that case to not
5 require notice. We had a very similar dialogue to the one
6 we're having with you now.

7 I will say what he found persuasive here were the points
8 Mr. Jessen raised, that there was a CAFA notice. There was
9 publicity. I will say there was a lot less publicity there
10 than here. He also noted that any filings would be on the
11 public ECF, so any class member paying attention would have
12 the opportunity to review that.

13 And fourth and finally, and it's something I'd like to
14 suggest here -- I have no authority with my client -- he
15 actually required the plaintiffs' counsel to post on their
16 website and the counsel here -- both lawyers have on their
17 website pages dedicated to this case. He required them to
18 post the attorneys' fees motions on that website and viewed
19 that as an appropriate form of notice.

20 Because here, as in that case, very difficult time
21 identifying who the people are, so one of our concerns
22 frankly, Your Honor, is once you dip your toe in this water
23 and exercise your discretion to require notice, we have a
24 serious concern that we do not want to be in a world where
25 someone down the line sues us again and says, well, Judge

1 Hamilton found that you had to give notice, and that notice
2 isn't adequate because I didn't see it.

3 That is our primary concern with this, so I would just
4 submit to Your Honor that I think those four forms that --

5 **THE COURT:** This is the first I've herd that there is
6 a suggestion of posting it. My main concern is with the
7 attorneys' fees.

8 **MR. CHORBA:** Right.

9 **THE COURT:** If indeed those are posted.

10 Tell me about this website. Tell me about -- you're
11 talking about the firm's website --

12 **MR. CHORBA:** The firm's.

13 **THE COURT:** -- or is there a class action website of
14 some --

15 **MR. CHORBA:** It's the firm's website, Your Honor.
16 There's no settlement process, no claims process, so there's
17 not a page dedicated to this case, nor would there be pursuant
18 to the settlement. I'm talking about the law firm's websites
19 where there's contact us if you're part of this case or you
20 are a potential claimant in this case.

21 And, again, it's analogous to the situation that we had in
22 a case with PepsiCo where Judge Chen found that convincing.
23 Again, he had your concerns, how are people going to know
24 about this, where would people go. And, again, those four
25 avenues I would just submit to Your Honor I think are

1 sufficient to kind of cover these concerns.

2 And anyone who's paid attention to this, anyone who has
3 any concern with it would receive notice of it, be able to
4 review the motions, either on the public docket, either
5 through the extensive press coverage --

6 **THE COURT:** How does counsel feel about putting the
7 motions on the website? I mean, the motion for fees
8 oftentimes include billing information, and what -- what's
9 your view on that?

10 **MR. BATES:** Well, we would put the public -- the same
11 versions of the motions that we would --

12 **THE COURT:** File it in ECF.

13 **MR. BATES:** -- publicly available through Pacer. To
14 the extent that we felt that we had to redact some things, I
15 think -- the most important aspects of it would still be
16 publicly available.

17 **THE COURT:** And so I assume then you're willing to do
18 that.

19 Have you all talked about this?

20 **MR. CHORBA:** No, Your Honor, I'm --

21 (Simultaneous colloquy.)

22 **MR. BATES:** -- I mean, I understand where the court
23 is coming from. I think it's become clear through this
24 discussion that the concerns among the parties are much more
25 about the internal fallout in terms of having to deal with

1 questions and the -- that Facebook has than -- than from
2 counsel's side in terms of -- of disclosing our attorneys'
3 fees or trying to avoid any objections to that.

4 And we have no concern with that and -- and, again, when
5 we started looking at this process, we started from the
6 perspective that we expected to be doing notice.

7 It was only after we read all of the case law and
8 everything went the other way and I had no cases to come and
9 show you to say, this court said notice is required.

10 But the court does have discretion. There's no question
11 about it.

12 **THE COURT:** No, and --

13 (Simultaneous colloquy.)

14 **MR. BATES:** -- think it's a matter of tailoring it to
15 the court's concerns so that -- so we avoid some of the -- the
16 detriments that the other courts have seen in this area that
17 can also address the court's concerns.

18 **THE COURT:** Well --

19 **MR. BATES:** We're certainly open --

20 **THE COURT:** My concern is less about the injunctive
21 relief, the practices that Facebook is ceasing to engage in
22 for the reasons that I already stated. My concern is less
23 about that than it is about giving the parties an opportunity
24 to object if they wish to the fees that are being sought.

25 **MR. BATES:** And we understand that.

1 **THE COURT:** There are two things that an injunctive
2 relief class would have the right to object to. One is that
3 the injunctive relief isn't broad enough and they think it
4 should go further. I'm not as concerned about that because
5 you all have agreed to discontinue the practices that were at
6 issue here in the case.

7 With regard to the attorneys' fees, however, there --
8 seems to me that we have an obligation to at least allow the
9 class members to file an objection if they wish.

10 I think what you've suggested is reasonable. Actually
11 with the posting of the -- it's not enough just to put them on
12 ECF because everybody doesn't have access to ECF --

13 (Simultaneous colloquy.)

14 **THE COURT:** Yes, they're publicly available, but you
15 have to be a filer in order to have access.

16 Putting them on the website of the firm is different. I
17 mean, a lot of people will Google a law firm and if you get to
18 the home page and if it's easily -- if you can put a link to
19 it so that it's easy enough for the -- any class members who
20 are perusing your website to find it. I would think that
21 would be adequate.

22 The only thing that I would ask in addition -- you said
23 there were four mechanisms.

24 **MR. CHORBA:** Yeah. And I can go through that again,
25 Your Honor. The publicity that this case has received, even

1 the settlement.

2 Number two, the CAFA notice that goes to all appropriate
3 State and federal officials.

4 Number three, the -- the public ECF. Everything in this
5 case is filed. But to Your Honor's point that general members
6 of the public may not have access.

7 **THE COURT:** Right.

8 **MR. CHORBA:** Posting on the websites of the
9 respective law firms. Again, if you're -- if you're trying to
10 target this to those people who would take an interest, our
11 belief is one of those four would be far more likely to
12 actually reach interested parties than a banner ad, which is,
13 in our view, going to create a lot of confusion. And we won't
14 just get the calls. Counsel will get calls. The court may
15 get calls.

16 And in this circumstances where substantive rights are not
17 being released, where there's no opt-out, if it's just the
18 concern about --

19 **THE COURT:** That's the principal concern.

20 **MR. CHORBA:** Again, the -- counsel's website where
21 it's there, anyone can download it. It's the public version
22 that they would file before Your Honor.

23 The class members who have taken an interest in this will
24 have the exact same information. And, Your Honor, we can post
25 the preliminary approval order with the schedule. I mean,

1 those are things I'd like to discuss with my client and
2 opposing counsel.

3 But I think that would be a way that would -- would
4 satisfy Your Honor's concern and -- and allow us to proceed
5 with wrapping up the settlement.

6 **MR. BATES:** And we're certainly -- we haven't
7 discussed this, but we're certainly open to all of that.

8 **THE COURT:** I would be satisfied with that. But I
9 would like something -- a filing from Facebook with regard to
10 the claim that you're making that the publicity is wide and
11 broad.

12 (Simultaneous colloquy.)

13 **THE COURT:** I'm not necessarily privy to all of that.
14 I don't read all of these stories. I only read what I get in
15 the *Recorder* or *Daily Journal*. And it hasn't been that much
16 publicity in those two -- those two journals, even though
17 there's been some.

18 **MR. CHORBA:** Right.

19 **THE COURT:** What I'd like is some compilation or
20 reference to them so that I can be assured that, indeed, this
21 story has been covered to the extent that you say it has.

22 **MR. CHORBA:** And it's extensive. For a class action,
23 Your Honor, it's -- it's extensive in my experience, so we
24 will -- we will do a supplemental -- if we can have a week to
25 put that together, we'll get it on file.

1 **THE COURT:** Okay.

2 **MR. CHORBA:** And shall we do an amended proposed
3 preliminary approval order along with it?

4 **THE COURT:** Yes, that includes these items, and that
5 will give you a little time to figure out at your firm how
6 you're going to go about posting it --

7 **MR. CHORBA:** That will be no problem.

8 **THE COURT:** -- once -- once you file it. And I like
9 the idea of including the order --

10 **MR. CHORBA:** Okay.

11 **THE COURT:** -- with the posting.

12 **MR. CHORBA:** Thank you, Your Honor.

13 **MR. BATES:** Okay.

14 **THE COURT:** Okay?

15 All right. So let's see if there's anything else. On --
16 The only other thing is I -- you know, I'm -- I've done it
17 both ways, but with regard to whether or not a class member
18 has to file something in writing before they can appear, I
19 don't generally require that.

20 If there is an objection, it's great to have them in
21 writing so that you all have advanced notice. So I don't have
22 any problem with the requirement that objections be in
23 writing, but I believe you all have included in the proposed
24 order that a class member won't be able to be heard unless
25 they've given written notice of an intention to appear.

1 No one needs to give advance notice of an intention to
2 appear. I always ask if there's someone who wishes to make an
3 objection. Every now and then, there is. And they don't have
4 to have filed something in advance.

5 So I'd like you to change that. I believe that's in
6 paragraph ten.

7 **MR. BATES:** Okay.

8 **MR. CHORBA:** That's -- That's an easy fix from our
9 perspective, Your Honor.

10 **MR. BATES:** And ours as well.

11 **THE COURT:** And do you need to also change paragraph
12 seven of the order? And that's where you would put -- that's
13 the place where you've said that you don't believe notice is
14 necessary. I'm not making that finding. I think some notice
15 is necessary.

16 It's just that the alternative to more direct notice that
17 you've suggested I am persuaded under the facts of this case
18 are probably sufficiently adequate and would help to avoid any
19 unnecessary confusion, so that's what it should say.

20 **MR. BATES:** We'll modify paragraph seven to conform
21 to that.

22 **THE COURT:** Okay. Seven and ten.

23 All right. With regard to the dates, then, assuming that
24 preliminary approval is given a week from today, which will
25 give you time to get the amended orders in and amended notice,

1 then the proposal is fine. We would just have to change
2 everything by a week.

3 So the motions for final approval and attorneys' fees
4 instead of being due May 19th would be due --

5 **THE CLERK:** 26th.

6 **THE COURT:** 26th?

7 **THE CLERK:** 26th.

8 **THE COURT:** May 26th.

9 Objections due instead of June 19th, would be --

10 **THE CLERK:** June 26th.

11 **THE COURT:** June 26th.

12 Response to objections -- I think that's two weeks later.
13 You have July 3rd, so that would be July 10th.

14 **THE CLERK:** Yes.

15 **THE COURT:** And the hearing instead of July 26 would
16 be August 2nd; is that right?

17 **THE CLERK:** Yes.

18 **THE COURT:** How's that?

19 **MR. JESSEN:** Give us one minute to confer with our
20 client, Your Honor.

21 (Pause in the proceedings.)

22 **MR. BATES:** I am not available on the 2nd. I can be
23 available the -- the next week, and I'm not sure if we're
24 going to be able to cover the 2nd on my side.

25 **MR. CHORBA:** Is the 9th available?

1 **THE COURT:** The 9th, is that available?

2 **THE CLERK:** The 9th is available.

3 **MR. CHORBA:** That works for all of us.

4 **MR. BATES:** Otherwise, I can check and --

5 **THE COURT:** The 9th is fine.

6 **MR. CHORBA:** Thank you, Your Honor.

7 **THE CLERK:** August 9th at 9:00 a.m.?

8 **THE COURT:** August 9th, 9:00 a.m.

9 All right. Then with that, I give -- grant preliminary
10 approval.

11 **MR. BATES:** Thank you, Your Honor.

12 **MR. CHORBA:** Thank you very much.

13 **MR. JESSEN:** Thank you, Your Honor.

14 **THE COURT:** You're welcome.

15 (Proceedings were concluded at 9:54 A.M.)

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CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter. I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken, and further that I am not financially nor otherwise interested in the outcome of the action.



Raynee H. Mercado, CSR, RMR, CRR, FCRR, CCRR

Monday, April 24, 2017