

1 THE HONORABLE JOHN C. COUGHENOUR

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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 BRUCE TOERING,

10 Plaintiff,

11 v.

12 EAN HOLDINGS LLC,

13 Defendant.

CASE NO. C15-2016-JCC

ORDER

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15 This matter comes before the Court on Plaintiff's unopposed motion for preliminary
16 approval of class action settlement and petition for attorney fees (Dkt. No. 64). Having
17 thoroughly considered Plaintiff's briefing and the relevant record, the Court DETERMINES and
18 ORDERS as follows:

19 A. Counsel have advised the Court that the Parties have agreed, subject to final
20 approval by this Court following notice to the previously-certified Class and a hearing, to settle
21 this Action on the terms and conditions set forth in the Settlement Agreement and Release of
22 Claims (the "Agreement") (Dkt. No. 65-1).

23 B. The Court has reviewed the Agreement, as well as the files, records, and
24 proceedings to date in this matter. The terms of the Agreement are hereby incorporated as though
25 fully set forth in this Order. Capitalized terms shall have the meanings attributed to them in the
26 Agreement.

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1 C. Based upon preliminary examination, it appears to the Court that the Agreement
2 is sufficiently fair, reasonable, and adequate to warrant notice to the Class and that the Court
3 should hold a hearing after notice to the Class to determine whether to enter a Settlement Order
4 and Final Judgment in this action, based upon that Agreement.

5 Based upon the foregoing, the Court FINDS and CONCLUDES as follows:

6 1. **Settlement Administrator.** The Court appoints Analytics, LLC as the Settlement
7 Administrator, which shall fulfill the Settlement Administration functions, duties, and
8 responsibilities of the Settlement Administrator as set forth in the Agreement and this Order.

9 2. **Settlement Hearing.** A final approval hearing (the “Settlement Hearing”) shall be
10 held before this Court on August 1, 2017, at 9 a.m., as set forth in the Class Notice (described in
11 Paragraph 3 below), to determine whether the Agreement is fair, reasonable, and adequate and
12 should be given final approval. Papers in support of final approval of the Agreement and Class
13 Counsel’s application for an award of attorney fees and costs, and for a Service Award to the
14 Representative Plaintiff (the “Fee and Cost Application”) shall be filed with the Court according
15 to the schedule set forth in Paragraph 9, below. The Court may postpone, adjourn, or continue
16 the Settlement Hearing without further notice to the Class. After the Settlement Hearing, the
17 Court may enter a Settlement Order and Final Judgment in accordance with the Agreement (the
18 “Final Judgment”), which will adjudicate the rights of the Class with respect to the claims being
19 settled.

20 3. **Class Notice.** The Court approves the form and content of the notices
21 substantially in the forms attached as Exhibits C, D1, and D2 to the Agreement. The Settlement
22 Administrator shall comply with the notice requirements of Paragraph 3.03 of the Agreement. In
23 compliance with that Paragraph, beginning no later than thirty (30) days after entry of this Order,
24 the Settlement Administrator shall cause notice to be delivered in the manner set forth in the
25 Agreement to all Class Members who can be identified with reasonable effort. Class Notices sent
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1 by U.S. Mail shall be substantially in the forms attached as Exhibits C, D1, and D2 to the
2 Agreement.

3 4. ***Filing of CAFA Notice.*** Before the Settlement Hearing, EAN shall file with the
4 Court proof of compliance with the notice provisions of the Class Action Fairness Act of 2005
5 (“CAFA”), 28 U.S.C. § 1715.

6 5. ***Findings Concerning Class Notice.*** The Court finds that the Class Notice and the
7 manner of its dissemination described in Paragraph 3 above and Paragraph 3.03 of the
8 Agreement constitutes the best practicable notice under the circumstances and is reasonably
9 calculated, under all the circumstances, to apprise Class Members of the pendency of this action,
10 the terms of the Agreement, and their right to object to or exclude themselves from the Class.
11 The Court finds that the notice is reasonable, that it constitutes due, adequate and sufficient
12 notice to all persons entitled to receive notice, and that it meets the requirements of due process,
13 Rule 23 of the Federal Rules of Civil Procedure, and any other applicable laws.

14 6. ***Exclusion from Settlement Class.*** Each Class Member who wishes to exclude
15 himself or herself from the Class and follows the procedures set forth in this Paragraph shall be
16 excluded. Any member of the Class may mail a written request for exclusion, in the form
17 specified in the Class Notice, to the Settlement Administrator at the address set forth in the Class
18 Notice. All such written requests must be postmarked by forty-five (45) days after the Settlement
19 Administrator’s initial mailing of the Class Notices. All persons who properly request exclusion
20 from the Class shall not be Settlement Class Members and shall have no rights with respect to,
21 nor be bound by, the Agreement, should it be finally approved. The names of all such excluded
22 individuals shall be attached as an exhibit to any Final Judgment.

23 7. ***Costs of Class Notice and Claims Processing.*** EAN shall bear all costs of notice
24 to the Class of the pendency and settlement of the Action.

25 8. ***Objections and Appearances.***

26 (a) Written Objections. Any Class Member who has not timely submitted a

1 written request for exclusion from the Class, and thus is a Settlement Class Member, may object
2 to the fairness, reasonableness, or adequacy of the Agreement, or the Fee and Expense
3 Application. Any Settlement Class Member who wishes to object to the Settlement, must submit
4 his or her objection in writing to Class Counsel, Attn: EAN Litigation, Adam Berger, Schroeter
5 Goldmark & Bender, 810 3rd Ave., Suite 500, Seattle, WA 98104, postmarked no later than
6 forty-five (45) days after the Settlement Administrator's initial mailing of the Class Notices.
7 Class Counsel will file copies with the Court via ECF. Objecting Settlement Class Members
8 must include their name and address, the name and number of the case, and a statement of the
9 reasons why they (i) believe the Court should find that the proposed settlement is not in the best
10 interests of the Class, or (ii) object to the Fee and Expense Application. Any objection not timely
11 made in this manner shall be waived and forever barred.

12 (b) Appearance at Settlement Hearing. Any objecting Settlement Class
13 Member who wishes to address the Court at the Settlement Hearing must indicate his or her
14 intent to do so in writing to Class Counsel at the same time that the Settlement Class Member
15 submits the objection and must identify any witnesses and documents that he or she intends to
16 use or submit at the Settlement Hearing. Class Counsel will inform the Court and EAN's counsel
17 accordingly. Any Settlement Class Member who does not timely deliver a written objection and
18 notice of intention to appear by forty-five (45) days after the Settlement Administrator's initial
19 mailing of the Class Notice, in accordance with the requirements of this Order, shall not be
20 permitted to object or appear at the Settlement Hearing, except for good cause shown, and shall
21 be bound by all proceedings, orders and judgments of the Court.

22 (c) Fees and Cost Application. Class Counsel shall file their Fee and Cost
23 Application, together with all supporting documentation, by no later than thirty (30) days from
24 entry of this Order, sufficiently in advance of the expiration of the objection period that any
25 Settlement Class Member will have sufficient information to decide whether to object and, if
26 applicable, to make an informed objection.

1 (d) Motion for Final Approval and Responses to Objections. The Parties shall
2 jointly file with the Court their motion for final approval of the Settlement and the Parties'
3 responses to objections to the Agreement or the Fee and Cost Application, together with all
4 supporting documentation, such that the motion is timely noted for August 1, 2017.

5 9. **Dates of Performance.** In summary, the dates of performance are as follows:

6 (a) The Settlement Administrator shall send the Class Notice to Class
7 Members on or before April 14, 2017, *i.e.*, within thirty (30) days after entry of this Order;

8 (b) Representative Class Counsel's Fee and Expense Application, and all
9 supporting materials, shall be filed no later than April 14, 2017, *i.e.*, within thirty (30) days after
10 entry of this Order;

11 (c) Class Members who desire to be excluded shall mail requests for
12 exclusion postmarked within forty-five (45) days from the date of the Settlement Administrator's
13 initial mailing of the Class Notices.

14 (d) All objections to the Agreement or the Fee and Cost Application shall be
15 filed and served by within forty-five (45) days from the date of the Settlement Administrator's
16 initial mailing of the Class Notices;

17 (e) Representative Plaintiff's final approval motion, responses to objections,
18 and all supporting materials, shall be filed by July 28, 2017;

19 (f) The Settlement Hearing shall be held on August 1, 2017, at 9 a.m.; and

20 10. **Effect of Failure to Approve the Agreement.** In the event the Court does not
21 finally approve the Agreement, or for any reason the Parties fail to obtain a Final Judgment as
22 contemplated in the Agreement, or the Agreement is terminated pursuant to its terms for any
23 reason, then the following shall apply:

24 (a) All orders and findings entered in connection with the Agreement shall
25 become null and void and have no further force and effect, shall not be used or referred to for
26 any purposes whatsoever, and shall not be admissible or discoverable in any other proceeding;

1 (b) Nothing contained in this Order is, or may be construed as, any admission
2 or concession by or against EAN, Plaintiff, or the Class on any point of fact or law; and

3 (c) Nothing in this Order or pertaining to the Agreement shall be used as
4 evidence in any further proceeding in this case, including, but not limited to, motions or
5 proceedings pertaining to treatment of this case as a class action.

6 11. ***Discretion of Counsel.*** Counsel are hereby authorized to take all reasonable steps
7 in connection with approval and administration of the Settlement not materially inconsistent with
8 this Order or the Agreement, including, without further approval of the Court, making minor
9 changes to the content of the Class Notice that they jointly deem reasonable or necessary.

10 12. ***Stay of Proceedings Pending Approval of the Settlement.*** All proceedings before
11 the Court are stayed pending final approval of the settlement, except as may be necessary to
12 implement the settlement or comply with the terms of the Agreement.

13 13. ***Injunction Against Asserting Released Claims Pending Settlement Approval.***
14 Pending final determination of whether the settlement should be approved, Representative
15 Plaintiff, all Class Members, and any person or entity allegedly acting on behalf of Class
16 Members, either directly, representatively or in any other capacity, are preliminarily enjoined
17 from commencing or prosecuting against the parties to be released in the Releases in Paragraphs
18 5.01 and 5.02 of the Agreement any action or proceeding in any court or tribunal asserting any of
19 the claims to be released in that paragraph, provided, however, that this injunction shall not apply
20 to individual claims of any Class Members who timely exclude themselves in a manner that
21 complies with this Order. This injunction is necessary to protect and effectuate the settlement,
22 this Order, and the Court's flexibility and authority to effectuate this settlement and to enter
23 judgment when appropriate, and is ordered in aid of the Court's jurisdiction and to protect its
24 judgments pursuant to 28 U.S.C. § 1651(a).

25 14. ***Reservation of Rights and Retention of Jurisdiction.*** The Court reserves the right
26 to adjourn or continue the date of the Settlement Hearing without further notice to Class

1 Members, and retains jurisdiction to consider all further applications arising out of or connected
2 with the settlement. The Court may approve or modify the settlement without further notice to
3 Settlement Class Members.

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5 DATED this 22nd day of March, 2017.

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9 John C. Coughenour
10 UNITED STATES DISTRICT JUDGE