

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF CALIFORNIA

3  
4 MATTHEW CAMPBELL, et al.,  
5 Plaintiffs,  
6 v.  
7 FACEBOOK INC.,  
8 Defendant.

Case No. 13-cv-05996-PJH

**ORDER GRANTING FINAL  
APPROVAL TO CLASS ACTION  
SETTLEMENT; GRANTING MOTION  
FOR ATTORNEYS' FEES AND  
SERVICE AWARDS**

Re: Dkt. Nos. 237, 238

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11 Plaintiffs' motions for final approval of a class action settlement and for attorneys'  
12 fees, costs, and service awards came on for hearing before this court on August 9, 2017.  
13 Plaintiffs appeared through their counsel, Hank Bates, Melissa Gardner, and David  
14 Rudolph. Defendant appeared through its counsel, Christopher Chorba, Joshua Jessen,  
15 and Jeana Maute. Anna St. John, the sole objector the settlement (the "Objector"),  
16 appeared through her counsel, William Chamberlain. For the reasons stated on the  
17 record at the hearing, and well as the reasons stated in plaintiffs' proposed orders, see  
18 Dkt. 244-1, 244-2, which are hereby adopted by the court and incorporated by reference,  
19 the court GRANTS plaintiffs' motions for final approval, attorneys' fees and costs, and  
20 service awards for the class representatives, and OVERRULES the objection of St. John.  
21 This supplemental order addresses Objector's concerns in greater detail.

22 **BACKGROUND**

23 The court has reviewed the facts of this case extensively in several prior orders.  
24 See Dkt. 43, 192. In brief, this is a certified class action alleging violations of the federal  
25 Electronic Communications Privacy Act ("ECPA") and California's equivalent, the  
26 Invasion of Privacy Act ("CIPA"). See Second Amended Complaint ("SAC"), Dkt. 196.  
27 Plaintiffs Matthew Campbell and Michael Hurley, as class representatives, allege that  
28 Facebook's practice of scanning its users' messages without consent violates these

1 statutes. Specifically, the allegations in this suit concerns the links to websites (URLs)  
2 that are sent in messages. Plaintiffs allege that Facebook's practice of scanning the  
3 content of their messages and its use of the URLs therein violates ECPA and CIPA.

4 **A. Procedural History**

5 The case was filed on December 30, 2013. On December 23, 2014, the court  
6 granted in part and denied in part Facebook's motion to dismiss, finding that the  
7 complaint sufficiently alleged that Facebook's scanning was an "interception" of a private  
8 message under ECPA, and that the "ordinary course of business" and "consent"  
9 exceptions did not apply.

10 Plaintiffs' original theory of liability was that when Facebook scans its users'  
11 messages, Facebook counts the inclusion of a URL in a message as a "like" of the  
12 website, and increases the public "like counter" by one. At the class certification stage,  
13 plaintiffs alleged two new theories of what constitutes the alleged "interception": (1) when  
14 a URL is included in a message, Facebook uses that information to generate  
15 "recommendations" for Facebook users; and (2) when a URL is included in a message,  
16 Facebook uses the information to create user profiles, which it shares with third parties  
17 so that they can generate targeted advertising. See Dkt. 192 at 4–5 (summarizing the  
18 three uses of URLs challenged by plaintiffs).

19 On May 18, 2016, plaintiffs achieved certification of the following class under Rule  
20 23(b)(2): "All natural-person Facebook users located within the United States who have  
21 sent, or received from a Facebook user, private messages that included URLs in their  
22 content (and from which Facebook generated a URL attachment), from within two years  
23 before the filing of this action up through the date of the certification of the class." Id. at  
24 2–3. The court found that ascertainability and the Rule 23(a) requirements were met. Id.  
25 at 13–17.

26 However, the court rejected plaintiffs' motion for class certification under Rule  
27 23(b)(3), finding that individual issues of damages predominated over common ones. Id.  
28 at 27. The court therefore granted certification only under Rule 23(b)(2), relying on

1 plaintiffs' representation that they sought only injunctive and declarative relief for the Rule  
2 23(b)(2) class. Id. at 29. Following the class certification ruling, plaintiffs filed the  
3 operative SAC, which contained new allegations in support of their targeted advertising  
4 and recommendation theories. Dkt. 196.

5 On April 26, 2017, the court granted preliminary approval of a proposed class  
6 settlement agreement. Dkt. 235. The court certified a settlement class of "[a]ll natural-  
7 person Facebook users located within the United States and its territories who have sent,  
8 or received from a Facebook user, private messages that included URLs in their content  
9 (and from which Facebook generated a URL attachment), from December 30, 2011 to  
10 March 1, 2017." Id.

#### 11 **B. The Terms of the Proposed Settlement Agreement**

12 The key terms of the Settlement Agreement ("S.A."), Dkt. 227-3, are:

- 13 • **Declaratory Relief.** Pursuant to the settlement, Facebook "acknowledges" its  
14 "cessation" of a number of practices in 2012, 2014, and 2017:
  - 15 ○ **The "Like" Count Increment.** "On or about December 19, 2012,"  
16 Facebook changed its source code so that the "like" count increment  
17 "no longer included the number of shares, by users, of URLs in  
18 private messages that resulted in creation of EntShares." S.A.  
19 ¶ 40(a)(i).
  - 20 ○ **Sharing URL Data with Third Parties via "Insights."** "On or about  
21 October 11, 2012," Facebook changed its source code such that "it  
22 ceased including information about URL shares in Facebook  
23 Messages that resulted in creation of EntShares (and attendant  
24 statistics and demographic information) within Insights and its related  
25 API." S.A. ¶ 40(a)(ii).
  - 26 ○ **Uses URLs to Generate "Recommendations."** "On or about July  
27 9, 2014," Facebook changed its source code such that it "ceased  
28 utilizing the PHP backend as the backup system for its  
Recommendations Feed." "The PHP backend considered . . . the  
number of times a URL had been shared in a Facebook Message."  
S.A. ¶ 40(a)(iii).
  - **Uses of EntShares in Messages.** As of March 1, 2017, Facebook  
"confirms . . . that it is not using any data from EntShares created  
from URL attachments sent by users in Facebook Messages for: 1)  
targeted advertising; 2) sharing personally identifying user

1 information with third parties; 3) use in any public counters in the  
 2 'link\_stats' and Graph APIs; and 4) displaying lists of URLs  
 3 representing the most recommended webpages on a particular web  
 4 site." S.A. ¶ 40(b).

5 • **Disclosure Changes:**

- 6 ○ **The Data Policy Change.** In "January 2015, Facebook's Data  
 7 Policy was revised" to disclose "that Facebook collects the 'content  
 8 and other information' that people provide when they 'message or  
 9 communicate with others.'" S.A. ¶ 40(c).
- 10 ○ **The Supplemental Help Center Disclosure.** Facebook shall  
 11 display the following message on its United States Help Center  
 12 website, for one year: "We use tools to identify and store links shared  
 13 in messages, including a count of the number of times links are  
 14 shared." S.A. ¶ 40(d).

- 15 • **Attorneys' fees and costs of up to \$3.89 million.** S.A. ¶ 57. Facebook  
 16 agrees to take "no position" on plaintiffs' attorneys' fee application. The  
 17 amount was negotiated independently of the other settlement terms. Id.
- 18 • **Incentive awards of \$5,000** for the two class representatives. S.A. ¶ 60.
- 19 • **The "Settlement Class Members' Released Claims"** are claims that "arise  
 20 out of, are based on, or relate in any way to the practices and claims that were  
 21 alleged in, or could have been alleged in, the Action" but not including "claims  
 22 for monetary relief, damages, or statutory damages." S.A. ¶ 49. The class  
 23 representatives' release is broader, releasing claims for monetary damages as  
 24 well. S.A. ¶ 47.

25 Plaintiffs now move for final approval of the settlement, an award of the full \$3.89  
 26 million in attorneys' fees and costs permitted under the agreement, and incentive awards  
 27 for the named plaintiffs. Dkt. 237, 238.

## 28 DISCUSSION

### A. Legal Standards

#### 1. Final Settlement Approval

A certified class action may not be settled without court approval. See Fed. R.  
 Civ. P. 23(e)(1)(A). In order for approval to be granted, the court must find that the  
 settlement is "fair, reasonable, and adequate," after holding a hearing on the matter. See  
 Fed. R. Civ. P. 23(e)(1)(C). At the fairness hearing, the burden is on the proponents of  
 the settlement to disclose what consideration is being given or paid for the dismissal of

1 the class claims, and they must further prove that: the settlement is not collusive and is  
2 the result of arms' length negotiation; sufficient discovery has been conducted by the  
3 lawyers representing the class to evaluate the claims and defenses; the lawyer  
4 recommending the settlement is competent, experienced and not subject to influence by  
5 the opposing party; and only a small fraction of the class has objected. See, e.g., In re  
6 Gen. Motors Corp. Pick-Up Truck Fuel Tank Prod. Liab. Litig., 55 F.3d 768, 785 (3d Cir.  
7 1995).

8 In deciding whether the settlement is fair, reasonable, and adequate, the court  
9 should compare the terms of the settlement with the likely rewards of litigation. Factors  
10 to consider include (1) the strength of the plaintiffs' case; (2) the risk, expense,  
11 complexity, and likely duration of further litigation; (3) the risk of maintaining class action  
12 status throughout the trial; (4) the amount offered in settlement; (5) the extent of  
13 discovery completed and the stage of the proceedings; (6) the experience and views of  
14 counsel; (7) the presence of a governmental participant; and (8) the reaction of the class  
15 members to the proposed settlement. Churchill Vill., LLC v. Gen. Elec., 361 F.3d 566,  
16 575 (9th Cir. 2004) (citing Hanlon v. Chrysler Corp., 150 F.3d 1011, 1026 (9th Cir. 1998)).

17 Any class member may object to the proposed settlement, and the trial court must  
18 allow all objectors the opportunity to present evidence showing that the settlement is  
19 contrary to the best interests of the class. See In re Gen. Motors Corp., 594 F.2d at  
20 1131. Generally speaking, the higher the number of objectors to a settlement, the  
21 heavier the proponents' burden in proving fairness.

## 22 **2. Attorneys' Fees**

23 Rule 23(h) of the Federal Rules of Civil Procedure provides that, in a certified  
24 class action, "the court may award reasonable attorney's fees and nontaxable costs that  
25 are authorized by law or by the parties' agreement." Like all provisions in a class action  
26 settlement, attorneys' fees awards must be "fundamentally fair, adequate and  
27 reasonable." Staton v. Boeing Co., 327 F.3d 938, 963 (9th Cir. 2003) (citing Fed. R. Civ.  
28 P. 23(e)). The district court has discretion to apply either the lodestar method or the

1 percentage-of-the-fund method in calculating the fee award. Fischel v. Equitable Life  
 2 Assurance Soc'y, 307 F.3d 997, 1006 (9th Cir. 2002).

3 The lodestar method is primarily used in cases, such as this one, involving a  
 4 statutory fee-shifting provision or where the relief sought is injunctive in nature and thus  
 5 not easily monetized. See, e.g., Hanlon, 150 F.3d at 1029; In re Gen. Motors Corp., 55  
 6 F.3d at 821. “[T]o calculate the ‘lodestar’ amount, [the court] multipl[ies] the number of  
 7 hours reasonably expended by the attorney(s) on the litigation by a reasonable hourly  
 8 rate, raising or lowering the lodestar according to the factors identified by this circuit.”  
 9 Gerwen v. Guarantee Mutual Life Co., 214 F.3d 1041, 1045 (9th Cir. 2000).

10 The Supreme Court has articulated eleven factors relevant in calculating the  
 11 lodestar figure: (1) the time and labor required; (2) the novelty and difficulty of the issues;  
 12 (3) the skill requisite to perform the legal service properly; (4) the preclusion of  
 13 employment by the attorney due to acceptance of the case; (5) the customary fee; (6)  
 14 time limitations; (7) the amount involved and the results obtained; (8) the experience,  
 15 reputation and ability of the attorneys; (9) the undesirability of the case; (10) the nature  
 16 and length of the professional relationship with the client; and (11) awards in similar  
 17 cases. Hensley v. Eckerhart, 461 U.S. 424, 433 (1983). For the hourly rate, the Ninth  
 18 Circuit instructs district courts to use “the rate prevailing in the community for similar work  
 19 performed by attorneys of comparable skill, experience, and reputation.” Chalmers v.  
 20 Los Angeles, 796 F.2d 1205, 1211 (9th Cir. 1985).

### 21 **3. Incentive Awards**

22 Incentive awards for class representatives are “fairly typical in class action cases.”  
 23 Rodriguez v. W. Publ'g Corp., 563 F.3d 948, 958 (9th Cir. 2009). Incentive awards,  
 24 which are also known as service awards, are “intended to compensate class  
 25 representatives for work done on behalf of the class, to make up for financial or  
 26 reputational risk undertaken in bringing the action, and, sometimes, to recognize their  
 27 willingness to act as a private attorney general.” Id. at 958–59. “Incentive payments to  
 28 class representatives do not, by themselves, create an impermissible conflict between

1 class members and their representatives.” In re Online DVD-Rental Antitrust Litig., 779  
2 F.3d 934, 943 (9th Cir. 2015). However, the settlement agreement may not “condition[]  
3 the incentive awards on the class representatives’ support for the settlement.” Radcliffe  
4 v. Experian Info. Sols. Inc., 715 F.3d 1157, 1164 (9th Cir. 2013). Nor may the class  
5 counsel and the representatives enter into an ex ante agreement to compensate the  
6 representatives. Rodriguez, 563 F.3d at 958–60.

7 Finally, the discrepancy between the incentive awards and the amount received by  
8 a typical class member must not be so great that it compromises the adequacy of class  
9 representation. Radcliffe, 715 F.3d at 1164; Staton, 327 F.3d at 977. Incentive awards  
10 of \$5,000 or less are usually considered presumptively reasonable in this district. See,  
11 e.g., In re LinkedIn User Privacy Litig., 309 F.R.D. 573, 592, (N.D. Cal. 2015) (“In this  
12 district, a \$5,000 incentive award is presumptively reasonable.”); see also In re Online  
13 DVD Rental Antitrust Litig., 779 F.3d at 942–43 (approving \$5,000 incentive awards for  
14 named plaintiffs even though class members received \$12).

## 15 **B. Analysis**

### 16 **1. Final Settlement Approval**

17 Applying the Hanlon factors—which are further discussed in plaintiffs’ proposed  
18 order, see Dkt. 244-2—the court concludes that the proposed settlement is fair,  
19 reasonable, adequate, and in the best interests of the class. The settlement offers  
20 immediate, tangible benefits directed to the three uses of URLs challenged by plaintiffs,  
21 without requiring class members to release any claims for monetary damages that they  
22 may have against Facebook. In contrast, proceeding with litigation would be very risky  
23 for the class. This case settled a few days prior to the close of discovery, which was  
24 extensive, allowing both sides to negotiate the settlement on a fully-informed basis.  
25 Class counsel is highly experienced and supports the settlement. Procedurally, the  
26 settlement is non-collusive and the result of four in-person, arms’-length mediations  
27 before two different mediators. Tellingly, only a single class member has objected to the  
28 settlement.

1           It is true, as Objector points out, that much of the relief obtained for the class was  
2 the result of Facebook’s changes in business practice in response to the litigation, rather  
3 than a result of the Settlement Agreement per se. However, the settlement still provides  
4 substantial benefits to the class, who give up almost nothing in return. Through the work  
5 of class counsel, the class has obtained essentially all of declaratory and injunctive relief  
6 that they sought. Facebook has confirmed that the three challenged practices have  
7 ceased, and there is no ECPA or CIPA violation going forward in light of the disclosure  
8 changes adopted by Facebook. While class members do not obtain any monetary relief,  
9 that is the natural result of this court’s orders, which certified an injunctive-relief-only Rule  
10 23(b)(2) class, and refused to certify a Rule 23(b)(3) damages class.

11           In the Settlement Agreement, Facebook represents that the complained-of  
12 practices ended in 2012 and 2014. In 2015, Facebook’s Data Policy was changed to  
13 obtain explicit consent to Facebook’s collection of data in messages. As the court stated  
14 in preliminary approving the settlement, “There are no damages at issue. You all have  
15 arrived at a mutually agreeable position with respect to the challenged uses . . . . I think  
16 that’s reasonable. I mean, that’s what [plaintiffs] were seeking in the case.” Dkt. 236,  
17 April 19 Hearing Tr. at 4:7–11 (emphasis added). The additional disclosure on the Help  
18 Center website provides further relief to the class, explaining Facebook’s policy regarding  
19 its use of data in messages in plain English, on a webpage accessed by hundreds of  
20 thousands of Facebook users per year.

21           Objector asserts that the class would get “no value” from the settlement. The  
22 court disagrees. Objector completely discounts the Help Center disclosure, as well as  
23 the value of the declaratory relief and the Data Policy change, which were the result of  
24 the litigation and are clearly acknowledged in the Settlement Agreement. Moreover, the  
25 relief to the class must be viewed against the likely rewards of litigation. Hanlon, 150  
26 F.3d at 1026. Here, any possible benefit to the class from continued litigation is both  
27 uncertain and insubstantial. In light of the Data Policy change and Facebook’s  
28 representation of “cessation” of practices, it is not clear what further benefit the class

1 could obtain if the case proceeded. The class would receive nothing if the case  
2 continued and Facebook prevailed on summary judgment.

3 Objector's real concern relates less to the terms of the settlement in itself, and  
4 more to the proportionality between the benefits for the class and the attorneys' fees  
5 sought. Although plaintiffs seek approval of their attorneys' fees separately from  
6 approval of the settlement, the Ninth Circuit has held that courts should be "particularly  
7 vigilant" for potential collusion when "counsel receive a disproportionate distribution of the  
8 settlement, or when the class receives no monetary distribution but class counsel are  
9 amply rewarded." See In re Bluetooth Headset Prod. Liab. Litig., 654 F.3d 935, 947 (9th  
10 Cir. 2011) ("Bluetooth"). Because the benefits to the class here are declaratory and  
11 injunctive in nature, it is difficult to put a dollar figure on their value and compare them to  
12 the attorneys' fees sought. Nonetheless, as explained above, the privacy interests of the  
13 class vindicated by the settlement and through this litigation are substantial, and the court  
14 rejects Objector's characterization of them as having "no value."

15 In any event, even assuming arguendo that attorneys' fees are "disproportionate,"  
16 that is merely one of the three "warning signs" of collusion identified in Bluetooth. The  
17 other two "warning signs"—a "clear sailing" arrangement, and the "reversion" of attorneys'  
18 fees, see id. at 947—concern the relationship between the "class fund" and the attorneys'  
19 fees. These considerations are inapplicable to this case because there is no common  
20 fund, "constructive" or otherwise: the certified class is injunctive-relief-only, and monetary  
21 damages claims are not at issue. Arguably, Bluetooth is not even applicable to this  
22 settlement because it does not involve a Rule 23(b)(2) damages class. Regardless,  
23 Bluetooth only requires that the court carefully scrutinize the settlement for collusion.  
24 Having done so, the court finds that there is no evidence of collusion here. The case was  
25 extremely hard-fought, and settled at an advanced procedural stage, after multiple  
26 mediations. Any disparity between the attorneys' fees award and the relief to the class is  
27 not the result of collusion, but merely a function of this court's decision to certify only an  
28 injunctive relief class, combined with the fee-shifting provisions of ECPA. Moreover, the

1 significant lodestar discount accepted by class counsel (discussed below) mitigates any  
2 disproportionality.

3 The other authorities relied on by Objector are all clearly distinguishable. Koby v.  
4 ARS National Services, Inc., 846 F.3d 1071 (9th Cir. 2017), involved a pre-certification  
5 settlement of Fair Debt Collection Practices Act (“FDCPA”) claims. The suit was based  
6 on defendant ARS’s failure to disclose on its voicemail messages that it was a debt  
7 collector. Id. at 1074. Shortly after suit was filed, ARS “voluntarily adopted a new,  
8 standardized voicemail message” that complied with FDCPA. Id. In the proposed  
9 settlement, ARS agreed to continue using the new voicemail message, pay the named  
10 plaintiffs \$1000, class counsel \$67,500, and \$35,000 in cy pres for the class. Id. at  
11 1074–75. The Ninth Circuit reversed settlement approval because the class received  
12 “worthless” injunctive relief in exchange for “g[iving] up their right to assert damages  
13 claims against the defendant in any other class action.” Id. at 1073.

14 Koby is distinguishable for two related reasons. First, as discussed above, the  
15 settlement here provides substantial value to the class. Second, and critically, the class  
16 is not giving up anything of real value in exchange for the settlement. Unlike the  
17 settlement in Koby, the class members here (other than the named representatives) do  
18 not waive any claims for damages. Indeed, monetary damages are no longer at issue in  
19 the case because of the court’s class certification ruling. Thus, even if the court agreed  
20 with Objector that that the “settlement’s injunctive relief is of no real value” to the class—  
21 which it does not—this case would still be unlike Koby because the class is not “required  
22 to give up anything [of value] in return.” Id. at 1080.

23 Objector further relies on In re Dry Max Pampers Litigation, 724 F.3d 713 (6th Cir.  
24 2013) (“Pampers”). Like Koby, the Pampers settlement was reached prior to class  
25 certification and very early on in the case; indeed, the Pampers plaintiffs settled “before  
26 any formal discovery.” Id. at 716. The settlement in Pampers resolved putative class  
27 claims for a diaper that allegedly caused severe diaper rash. Under the settlement, the  
28 named plaintiffs received \$1000 per “affected child” and class counsel received \$2.73

1 million in attorneys' fees. The class, however, received "nearly worthless injunctive  
2 relief": specifically, a resumption of a refund program (which defendants had already  
3 made available), a "rudimentary disclosure" about diaper rash on Pampers' website, a  
4 minor labeling change, and a cy pres contribution. Id. at 716. Although the unnamed  
5 class members did not waive their damages claims, the court found that "illusory"  
6 injunctive relief could not support nearly \$3 million in fees. Id. at 721.

7 Pampers is an out-of-circuit decision and merely persuasive authority. However,  
8 even if Pampers were binding on this court, it is readily distinguishable for several  
9 reasons. First, this case is at a much more advanced procedural stage, having settled  
10 near the close of discovery following extensive motions practice, including motions to  
11 dismiss, a motion for class certification, and multiple discovery disputes. Second,  
12 damages claims were possible in Pampers, even if they were not released in the  
13 settlement. However, the damages claims in Pampers were negotiated away by  
14 plaintiffs' counsel such that the class members received no monetary reward. Here,  
15 there is no analogous potential for collusion; any possibility of monetary damages for the  
16 class was foreclosed by this court's orders. Third, unlike Pampers, the attorneys' fees  
17 here are sought on a lodestar basis based upon actual work performed by class counsel  
18 over more than three years of highly contentious litigation. In contrast, the \$2.73 million  
19 fee sought in Pampers was unreasonable in part because counsel "did not take a single  
20 deposition, serve a single request for written discovery, or even file a response to  
21 [defendant's] motion to dismiss." Id. at 718.

22 Objector also cites to In re Walgreen Co. Stockholder Litigation, 832 F.3d 718 (7th  
23 Cir. 2016) ("Walgreens"), another out-of-circuit decision. As an initial matter, Walgreens  
24 involves a highly distinct factual context because the putative class action in that case  
25 was a "strike suit" filed to tie up a proposed transaction for "the sole purpose of obtaining  
26 fees for the plaintiffs' counsel." Id. at 721. Furthermore, the case is distinguishable for  
27 many of the same reasons discussed above with respect to Koby and Pampers. Unlike  
28 this case, the Walgreens settlement was reached at a very early stage in the litigation (a

1 mere “18 days” after the suit was filed), and the disclosure-only settlement was entirely  
2 “worthless” to the class. See id. at 721–24. Objector primarily relies on Walgreens for  
3 the proposition that a settlement with “zero” benefit for the class can never be fair.

4 However, as the court has explained, the settlement here provides value to the class.

5 Finally, Objector raises concerns about the settlement’s notice plan. The court  
6 already addressed the Rule 23 notice requirements at length at the hearing for  
7 preliminary settlement approval. Although the court rejected the proposition that notice is  
8 purely discretionary for a Rule 23(b)(2) class, it need only be “reasonable” under Rule  
9 23(e) and 23(h). The court found that the various forms of notice given—including the  
10 extensive publicity that the case received, posting of the settlement documents on class  
11 counsel’s websites, CAFA notice, et al.—were reasonable under the circumstances.  
12 Individual direct notice would carry substantial costs in light of ascertainability issues,  
13 and, importantly, the court was persuaded that such notice would create serious risks of  
14 confusion for the class members. Objector’s reliance on Mullane v. Central Hanover  
15 Bank & Trust Co., 339 U.S. 306 (1950), to assert a Due Process violation is misplaced.  
16 Mullane is readily distinguishable because that case involved actual property rights—  
17 money in a trust. Id. at 308–09. Here, less process is due because the only thing at  
18 stake for the absent class members is their right to sue for an injunction against practices  
19 that have already ceased. See Mathews v. Eldridge, 424 U.S. 319, 335 (1976); see also  
20 Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338, 363 (2011).

21 For all these reasons, the court GRANTS final approval of the settlement.

## 22 **2. The Reasonableness of the Requested Attorneys’ Fees**

23 For the reasons stated on the record at the recording, and in plaintiffs’ proposed  
24 order, see Dkt. 244-1, the court GRANTS approval of the \$3.89 million in attorneys’ fees  
25 and costs sought by plaintiffs. Although the court usually requires more detailed billing  
26 records to support a lodestar application, any concern on this front is mooted by plaintiffs’  
27 agreement to accept a very significant lodestar discount. The fees sought by plaintiffs  
28 are less than half of their actual lodestar, yielding a “negative multiplier” of 0.497.

United States District Court  
Northern District of California

1 To be sure, \$3.89 million is still a significant fees award. However, the court finds  
2 that class counsel achieved an excellent result for the class and fully earned their fee.  
3 This was a very hard-fought case, with heavy motions practice and intensive discovery in  
4 a highly technical context. Moreover, the case was taken on contingency, and success  
5 was uncertain in light of novel legal issues.

6 **3. The Incentive Awards**

7 Finally, the court approves the \$5,000 incentive awards for the two named class  
8 representatives, Matthew Campbell and Michael Hurley. The amount sought is  
9 presumptively reasonable in this district. See In re LinkedIn User Privacy Litig., 309  
10 F.R.D. at 592. “Incentive payments to class representatives do not, by themselves,  
11 create an impermissible conflict between class members and their representatives.” In re  
12 Online DVD-Rental Antitrust Litig., 779 F.3d at 943.

13 Although these monetary awards are more valuable than the declaratory and  
14 injunctive relief received by the unnamed class members, the court finds that this  
15 difference does not compromise the adequacy of class representation because: (1) unlike  
16 the class, the named representatives are waiving their claims for damages; (2) the  
17 awards are not conditioned upon support for the settlement; (3) both named plaintiffs sat  
18 for daylong depositions; and (4) both named plaintiffs actively participated in the litigation,  
19 including the production of their private Facebook messages in discovery. See Dkt. 239  
20 at 27–33 (supporting declarations of Campbell and Hurley).

21 **CONCLUSION**

22 For the foregoing reasons, plaintiffs’ motions for final settlement approval, an  
23 award of attorneys’ fees, and incentive awards are GRANTED. St John’s objections are  
24 OVERRULED.

25 **IT IS SO ORDERED.**

26 Dated: August 18, 2017



27  
28 PHYLLIS J. HAMILTON  
United States District Judge