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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

**IN RE GOOGLE LLC STREET VIEW
ELECTRONIC COMMUNICATIONS
LITIGATION**

Case No. 3:10-MD-02184-CRB

**[PROPOSED] ORDER GRANTING
PLAINTIFFS’ MOTION FOR FINAL
APPROVAL OF CLASS
SETTLEMENT AND ENTERING
FINAL JUDGMENT**

Before the Court is Plaintiffs’ Motion for Final Approval of Class Action Settlement. The Court held a hearing on this matter on February 28, 2020. The Court has considered the Settlement Agreement (“Settlement”), objections and comments received regarding the Settlement, the record in the Action, and the arguments and authorities of counsel. Good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

I. DEFINED TERMS

1. Unless otherwise defined herein, all terms that are capitalized herein shall have the meanings ascribed to those terms in the Settlement Agreement.

II. JURISDICTION

2. This Court has jurisdiction over the subject matter of this Action, all parties to the Action, and all Class Members.

1 **III. STANDING**

2 3. The Court finds and concludes that the Class Representatives have standing under
3 Article III of the United States Constitution. The Class Representatives have alleged that Defendant
4 Google, LLC (“Google”) willfully intercepted and stored their private electronic communications in
5 violation of Title III of the Omnibus Crime Control and Safe Streets Act of 1968, as amended by the
6 Electronic Communications Privacy Act of 1986, 18 U.S.C. §§2510, *et seq.* (together, “the Wiretap
7 Act”). The alleged invasions are concrete and particularized injuries-in-fact to rights defined and
8 protected by statute and falling well within the courts’ traditional sphere of authority. The alleged
9 injuries are fairly traceable to the challenged conduct of the defendant and are redressable by the
10 Court.

11 **IV. CERTIFICATION OF RULE 23(B)(3) CLASS FOR SETTLEMENT PURPOSES**
12 **ONLY**

13 4. The Court finds and concludes that, for the purposes of approving this Settlement
14 only, the Rule 23(b)(3) Class proposed in Plaintiffs’ Motion meets the requirements for certification
15 under Rule 23 of the Federal Rules of Civil Procedure:

16 (a) The Class is so numerous that joinder of all members is impracticable;

17 (b) There are questions of law or fact common to the Class;

18 (c) The claims or defenses of the Class Representatives are typical of the claims
19 or defenses of the Class;

20 (d) Class Representatives and Class Counsel will fairly and adequately protect the
21 interests of the Settlement Class because Class Representatives have no interests antagonistic to the
22 Settlement Class, and have retained counsel who are experienced and competent to prosecute this
23 matter on behalf of the Settlement Class;

24 (e) The questions of law or fact common to Class Members predominate over any
25 questions affecting only individual members; and

26 (f) Class treatment is superior to other available methods for fairly and efficiently
27 adjudicating the controversy.

28 5. Accordingly, the Court certifies the Class for Settlement purposes only under Rule

23(b)(3). The Class shall consist of all persons who used a wireless network device from which Acquired Payload Data was obtained. Acquired Payload Data shall be defined as set forth in the Settlement Agreement. Class membership shall not include (a) any Releasee, as defined in the Settlement Agreement; (b) any judicial officer presiding over the Action, or any member of his or her immediate family or of his or her judicial staff; and (c) any Excluded Class Member as defined in the Settlement Agreement. *See* Settlement Agreement ¶ 7.

V. AFFIRMATION OF APPOINTMENT OF CLASS COUNSEL

6. The Court confirms its appointment of Spector Roseman & Kodroff, P.C. and Cohen Milstein Sellers & Toll PLLC as Co-Lead Class Counsel for the Class, and of Lieff Cabraser Heimann & Bernstein LLP as Liaison Counsel for the Class under Rule 23(g).

VI. FINAL APPROVAL OF SETTLEMENT AS FAIR, REASONABLE, AND ADEQUATE

7. The Court approves the Settlement as fair, reasonable, and adequate and in the best interests of the Class Members under Rule 23(e). The Court has specifically considered the factors relevant to class settlement approval and finds and concludes that:

(a) the Class Representatives and Class Counsel have adequately represented the class;

(b) the Settlement was negotiated at arms' length and without collusion;

(c) the relief provided for the class is adequate, taking into account (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of distributing relief to the class, in particular through injunctive relief and distributions of settlement funds to *cy pres* recipients who will use said distributions to promote Internet privacy; (iii) the terms of fees and expenses proposed by Class Counsel in their accompanying Motion for Attorneys' Fees, Reimbursement of Expenses, and Plaintiff Service Awards; and (iv) the absence of any relevant agreement made in connection with the Settlement; and

(d) the Settlement treats Class Members equitably relative to each other.

8. The Court has also considered factors including, *inter alia*, the strength of Plaintiffs' case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining

1 class action status throughout trial; the relief provided for in the Settlement; the extent of discovery
2 completed and stage of the proceedings; the experience and views of Class Counsel and the
3 involvement of a respected mediator in the negotiation of the Settlement; and the reaction of Class
4 Members to the proposed settlement, and finds and concludes that these factors weigh in favor of
5 approving the Settlement. *See Churchill Village, L.L.C. v. General Elec.*, 361 F.3d 566 (9th Cir.
6 2004).

7 **9.** The Court has also scrutinized the Settlement and negotiation history for any signs of
8 potential collusion (*see, e.g., In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935 (9th Cir.
9 2011)), and finds that the Settlement is not the product of collusion. This finding is supported by,
10 among other things: the fact that the Settlement was negotiated by experienced, well-qualified
11 counsel with the help of an experienced mediator; the Settlement provides substantial benefits to
12 Class Members and such benefits are not disproportionate to the attorneys' fees and expenses sought
13 by Class Counsel; the benefits provided to Class Members are appropriate under the circumstances
14 of this case; the parties began negotiating regarding attorneys' fees and expenses only after reaching
15 an agreement regarding the key deal terms; and the parties have made no "clear sailing" arrangement
16 regarding attorneys' fees.

17 **10.** The Court finds and concludes that the *cy pres* distributions ordered below are
18 tethered to the nature of the lawsuit, the objectives of the Wiretap Act and the interests of absent
19 Class Members. The *cy pres* distributions are limited to independent organizations with a track
20 record of addressing consumer privacy concerns, who will commit to use the funds to promote the
21 protection of Internet privacy. The awards ordered below serve the compensatory and deterrent goals
22 of the Wiretap Act better than any available alternative method of redress for Class Members.

23 **11.** The Court finds and concludes that the Settlement Fund is effectively "non-
24 distributable" because the fund cannot be efficiently and effectively distributed to Class
25 Members. Most Class Members cannot be identified, and identification of the few Class Members
26 who can be identified would be very costly. *See Lane v. Facebook, Inc.*, 696 F.3d 811, 819.
27 Accordingly, it is reasonable to distribute the settlement funds instead to *cy pres* recipients to ensure
28 that as much of the Settlement Fund as possible benefits the Class (and is not dissipated to pay

1 settlement administration costs) and that the Fund benefits the entire Class (rather than the few Class
 2 Members who can be identified).

3 **12.** The Court has scrutinized the Settlement closely for signs that the selection of *cy pres*
 4 recipients may “answer to the whims and self-interests of the parties, their counsel, and the court.”
 5 *Nachshin v. AOL, LLC*, 663 F.3d 1034, 1039 (9th Cir. 2011). The Court finds no relationship
 6 between proposed recipients and Class Counsel, Google, or the Court that undermines the fairness of
 7 the Settlement to Class Members.

8 **13.** The Court has reviewed the proposals submitted by the proposed *cy pres* recipients,
 9 as well as the application of the Electronic Privacy Information Center, and finds that the following
 10 *cy pres* awards are appropriate and will best serve the objectives of the Wiretap Act and the interests
 11 of Absent Class Members:

Organization	Amount
Center on Privacy & Technology at Georgetown Law	
Center for Digital Democracy	
MIT Internet Policy Research Initiative	
World Privacy Forum	
Public Knowledge	
American Civil Liberties Union Foundation	
Consumer Reports	
Electronic Privacy Information Center	
Rose Foundation for Communities and the Environment	

23
 24 **VII. NOTICE**

25 1. The Court finds that the forms, content, and methods of disseminating notice to the
 26 Class Members previously approved and directed by the Court have been implemented by the Parties
 27 and (i) comply with Rule 23(c)(2) of the Federal Rules of Civil Procedure as they are the best
 28

1 practicable notice under the circumstances and are reasonably calculated, under all the
2 circumstances, to apprise the Class Members of the pendency of this Action, the terms of the
3 Settlement, and their right to object to the settlement; (ii) comply with Rule 23(e) as they are
4 reasonably calculated, under the circumstances, to apprise the Class Members of the pendency of the
5 Action, the terms of the proposed settlement, and their rights under the proposed settlement,
6 including, but not limited to, their right to object to, or opt out of, the proposed Settlement and other
7 rights under the terms of the Settlement Agreement; (iii) comply with Rule 23(h) as they are
8 reasonably calculated, under the circumstances, to apprise the Class Members of any motion by
9 Class Counsel for reasonable attorney's fees and nontaxable costs, and their right to object to any
10 such motion; (iv) constitute due, adequate, and sufficient notice to all Class Members and other
11 persons entitled to receive notice; and (v) meet all applicable requirements of law, including, but not
12 limited to, 28 U.S.C. § 1715, Fed. R. Civ. P. 23(c), (e), and (h), and the Due Process Clause(s) of the
13 United States Constitution.

14 **14.** The Court finds that Google properly notified the appropriate state and federal
15 officials of the Settlement, pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715.

16 **VIII. CONSUMMATION OF THE SETTLEMENT**

17 **15.** Accordingly, the Court directs the Parties to consummate the Settlement according to
18 its terms, as follows:

19 **IX. INJUNCTIVE RELIEF**

20 **16.** Pursuant to the Settlement, Google shall destroy all Acquired Payload Data, including
21 the disks containing such data, within forty-five (45) days of this Order, subject to any preservation
22 obligations Google may have with respect to any Excluded Class Member. Google shall report via
23 counsel to Class Counsel upon the expiration of the forty-five (45) days whether it has destroyed the
24 Acquired Payload Data. If Google does not destroy the Acquired Payload Data within the forty-five
25 (45) days because of ongoing preservation obligations, it will report accordingly to Class Counsel.
26 When the Acquired Payload Data are destroyed, Google will report via counsel the fact of
27 destruction to Class Counsel.
28

1 **17.** Pursuant to the Settlement, Google shall not collect and store for use in any product
2 or service Payload Data via Street View Vehicles, except with notice and consent.

3 **18.** Pursuant to the Settlement, Google shall comply with all aspects of the Privacy
4 Program described in paragraph 16 of Section I of the Assurance of Voluntary Compliance and with
5 the prohibitive and affirmative conduct described in paragraphs 1-5 of the Assurance of Voluntary
6 Compliance. Through counsel, Google shall confirm to Class Counsel in writing on an annual basis
7 that it remains in compliance.

8 **19.** Pursuant to the Settlement, Google shall host and maintain educational webpages that
9 instruct users on the configuration of wireless security modes and the value of encrypting a wireless
10 network, including a how-to video demonstrating how users can encrypt their networks and
11 instructions on how to remove a wireless network from inclusion in Google's location services.

12 **20.** Google's obligations as described in Paragraphs 16-19 above shall terminate five
13 years after the date of Final Approval of this Settlement (as defined in the Settlement Agreement ¶
14 14).

15 **X. CY PRES DISTRIBUTIONS**

16 **21.** Pursuant to the Settlement, Class Counsel shall direct distributions from the Escrow
17 Account (as defined in the Settlement Agreement) to the *cy pres* recipients identified in Paragraph
18 13 in the dollar amounts specified. The Court approves and orders such distributions. The Escrow
19 Agent shall arrange such distributions according to Class Counsel's instructions.

20 **XI. RELEASE OF CLAIMS**

21 **22.** The Parties and Class Members are bound by the terms and conditions of the
22 Settlement. As of the date of Final Approval of this Settlement (as defined in the Settlement
23 Agreement ¶ 14), Releasors shall be deemed to have fully, finally, and forever released and
24 discharged Releasees from the Released Claims, as those terms are defined in the Settlement
25 Agreement. The full terms of the release described in this paragraph are set forth in Paragraphs 46
26 through 48 of the Agreement. The Court expressly adopts and incorporates by reference Paragraphs
27 46 through 48 of the Agreement.

28 **23.** The Parties are to bear their own costs, except as awarded by this Court in this Final

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Order.

24. The benefits described above are the only consideration Google shall be obligated to give to the Class Members, with the exception of the service awards to be paid to the Class Representatives as directed by the Court.

25. The Court reserves exclusive and continuing jurisdiction over the Action, the Class Representatives, the Class Members, and Google for the purposes of supervising the implementation, enforcement, construction, administration and consummation of the Settlement Agreement and this Judgment.

XII. FINAL JUDGMENT AND DISMISSAL WITH PREJUDICE

26. By operation of this Order, this Action is hereby dismissed with prejudice. Under Rule 54(b) of the Federal Rules of Civil Procedure, no just reason for delay exists for delay in entering final judgment. The Court accordingly directs the Clerk to enter final judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure.

IT IS SO ORDERED.

Dated: _____

THE HONORABLE CHARLES R. BREYER
United States District Judge