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16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA
18

19
20 IN RE GOOGLE BUZZ USER
PRIVACY LITIGATION

Case No.: CV 10-00672 JW

[Hon. James Ware, Courtroom 8]

21
22 **OBJECTIONS TO PROPOSED**
23 **ORDER AND FINAL JUDGMENT**
24 **GRANTING FINAL APPROVAL**
25 **OF CLASS ACTION**
26 **SETTLEMENT AND AWARDING**
27 **ATTORNEYS' FEES**

1 Plaintiff-Objectors JON M. ZIMMERMAN, ALISON JACKSON, and
2 TANYA RUDGAYZER, by and through their respective counsel above
3 (hereinafter, collectively, “Objectors”), object to the Proposed Order and Final
4 Judgment Granting Final Approval of Class Action Settlement and Awarding
5 Attorneys’ Fees as follows:

6 **A. Proposed Cy Pres Recipients Include Primarily Industry-**
7 **Supported Organizations That Receive Substantial Funding**
8 **From Defendant**

9 Objectors appreciate the need for a balanced selection of *cy pres* recipients.
10 However, in the arena of online privacy, it is extremely important to note that
11 there is a striking difference between the advocacy of groups that receive
12 substantial industry funding, and the groups that do not receive substantial
13 industry funding.

14 There are very few national organizations truly focused on online privacy,
15 and fewer still that play a significant role in public policy and consumer
16 protection actions directed at protecting privacy rights from commercial—not
17 governmental—interests. While both industry-funded and non-industry-funded
18 groups are potentially worthy candidates for funding many reasons, we believe it
19 is imperative for the purposes of the settlement and the benefit of the class that
20 organizations which typically do not receive substantial industry funding be
21 apportioned the bulk of the funding in this case.

22 To that end, there are several facts regarding the *cy pres* recipients proposed
23 by Class Counsel that raise red flags—both in terms of the information that Class
24 Counsel has provided to the Court and the information that Class Counsel has
25 omitted.

26 First, there are only 12 organizations selected, while over 77 applications
27 were received. (Class Counsel’s Submission Brief, p. 1:7–13.) In addition,
28 some of the most prolific and reputable consumer privacy organizations have been

1 omitted from the list without explanation. While Objectors applaud the inclusion
2 of the Electronic Frontier Foundation and appreciate the value of organizations
3 like the Center for Democracy and Technology, the most active and long-standing
4 online privacy organization in the nation was omitted, the Electronic Privacy
5 Information Center. In addition, applicants with missions that would directly
6 benefit the class were omitted, including the Center for Digital Democracy.
7 Objectors are informed that both of these organizations applied for funding in this
8 matter. These are but two of the worthwhile, focused organizations that applied
9 for *cy pres* funding and were omitted by Class Counsel.

10 It also appears from Class Counsel's filing that Defendant was involved in
11 deciding which nominees to submit to the Court. This participation likely played
12 a role in the omission of the groups identified above, because Defendant has
13 applied pressure on the Rose Foundation (utilized by Class Counsel here) in the
14 past to direct *cy pres* funding away from similar groups.¹

15 In addition, Objectors are concerned that Defendant funds a large portion of
16 the existing budget of many of these groups, and often provides funding in excess
17 of the total budgets reported for online privacy programs. Many of the groups are
18 otherwise extremely well-funded or broad-based organizations that have a number
19 of programs not related to consumer privacy online.

20 Finally, many of these groups, or the institutions with which they are
21 affiliated, receive funding from Defendant or have other entanglements that were
22 not reported to the Court. Publicly available information reveals the following:

23 Berkley Center for Law & Technology reports "0" contributions from
24 Defendant, but Google, Inc. is listed as a current "Corporate Benefactor" of the
25

26
27 ¹ Wendy Davis, *Google Tries to Kibosh Funding of Critic*, MediaPost News,
28 Online Media Daily (Feb. 25, 2009) available at http://www.mediapost.com/publications/?fa=Articles.showArticle&art_aid=100929.

1 Center (<http://www.law.berkeley.edu/bcltsponsors.htm>). In addition, the Center
2 lists law firm WilmerHale as a “Benefactor;” the firm represents Google. Google
3 is also a sponsor of the 2010 “Privacy Law Scholars Conference” convened by the
4 Center and George Washington University Law School ([http://docs.law.gwu.edu/
5 facweb/dsolove/PLSC/](http://docs.law.gwu.edu/facweb/dsolove/PLSC/)).

6 Carnegie Mellon, CyLab Usability, Privacy & Security Lab reports funding
7 from Defendant, but fails to report the access to Google “tools, technologies, and
8 expertise” included with at least one of the grants it provided
9 (http://research.google.com/university/relations/focused_research_awards.html).

10 Indiana University, Center for Applied Cybersecurity Research reports “0”
11 Defendant funding, but its director (<http://www.fredhcate.com/affiliations.shtml>)
12 is also a senior policy advisor for the Center for Information Policy and
13 Leadership, which does receive Google money ([http://www.hunton.com/
14 Resources/Sites/general.aspx?id=342](http://www.hunton.com/Resources/Sites/general.aspx?id=342)).

15 Stanford Center for Internet & Society receives so much money from
16 Google (over 50 percent of its budget) that it has actually agreed to refrain from
17 all litigation involving Google (<http://cyberlaw.stanford.edu/about>). How it can
18 reconcile this position with being a further recipient of Google funding in this
19 lawsuit is unexplained. However, it is clear that an organization that bars itself
20 from being critical of Google cannot serve the class interest in a case like this.

21 The above concerns are by no means an exhaustive list of the hidden
22 conflicts of interest presented by Class Counsel’s selections. Objectors raise these
23 issues before the Court not to attack these organizations, many of which do
24 important work, but to heighten the Court’s awareness of the political landscape
25 from which the nominees were selected.

26 **B. Class Counsel Improperly Sought Defendant’s Approval Prior to**
27 **Submitting the List of Cy Pres Recipients to the Court**

28 Objectors also strongly question the basis for Defendant’s involvement in

1 the selection process that resulted in the 12 nominees anointed by Class Counsel.
2 Objectors respectfully urge the Court to review all applications provided to Class
3 Counsel and not substitute Class Counsel’s Defendant-influenced judgment in
4 deciding which *cy pres* nominees to fund.

5 Pursuant to the original, flawed settlement agreement—to which Objectors
6 continue to strenuously object—Class Counsel and Google were to mutually agree
7 on the *cy pres* recipients. (Settlement Agreement, ¶ 3.4(b).) Objectors argued at
8 length that any such mystery *cy pres* award was improper (E.g., Zimmerman Brief
9 [Doc. No. 83], pp. 14–18; Jackson Brief [Doc. No. 74], pp. 9–10; Rudgayzer Brief
10 [Doc. No. 80] pp. 11–12), and that the settlement agreement exhibited the
11 hallmarks of a collusive settlement.

12 These matters were argued at the hearing on final approval and Court issued
13 its Order of February 16, 2011, thereafter. For Objectors’ part, it seems clear that
14 while Defendant was permitted to make nominations of *cy pres* recipients, the
15 Court did not intend for Defendant to be involved in the final selection of the
16 nominees. Objectors maintain that permitting Google to do so violates the spirit
17 of the February 16, 2011 Order and the purposes of the settlement. Particularly
18 given Defendant’s pattern of attempting to exert control over *cy pres* recipients in
19 the past (see, e.g., *supra*, footnote 1), the Court should be vigilant against
20 Defendant’s influence here and the detriment to the class interests.

21 As noted above, in order to avoid Defendant’s improper influence on the *cy*
22 *pres* recipients, Objectors respectfully request the Court order Class Counsel to
23 divulge all applicants for the *cy pres* funds, the details surrounding its selection
24 procedure, including communications with Defendant, and select *cy pres*
25 recipients from all applicants or other organizations without regard for Class
26 Counsel and Google’s suggestions.

27 **C. Objectors Reiterate Objections to the Pending Proposed Order**

28 Objectors continue to assert that the entire settlement is improper for the

1 reasons set forth in their previous briefing and argument. This objection to
2 Proposed Order and Final Judgment is not offered as a waiver of any previous
3 objection, but only to express Objector's continuing concerns on behalf of the
4 class membership.

5 Specifically, Objectors continue to assert that, in addition to the above, the
6 relief in the settlement is inadequate and illusory, that there are defects in the
7 notices and the breadth of the class definition (including, but not limited to, the
8 inclusion of personal injury and other actual damage claims in the release), that *cy*
9 *pres*-only distribution is improper in a class action for statutory damages resulting
10 from violations of federal privacy statutes, and that the settlement appears to
11 demonstrate collusion between Class Counsel and Defendant.

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1 In light of the foregoing, Objectors respectfully request the Court reject the
2 settlement as previously proposed, or, in the alternative, at least select the *cy pres*
3 recipients without regard for the nominees culled by Class Counsel and Defendant
4 from the complete pool of applicants.

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6 Dated: March 30, 2011

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