

1 LARRY C. RUSS (SBN 82760)
l russ@raklaw.com
2 RUSS AUGUST & KABAT
12424 Wilshire Boulevard, 12th Floor
3 Los Angeles, California 90025
Telephone: (310) 826-7424
4 Facsimile: (310) 826-6991

5 MICHAEL W. SOBOL (SBN 194857)
msobol@lchb.com
6 NICHOLAS R. DIAMAND (*Pro Hac Vice*)
ndiamand@lchb.com

7 MELISSA GARDNER (SBN 289096)
mgardner@lchb.com

8 LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
275 Battery Street, 29th Floor
9 San Francisco, CA 94111
Telephone: (415) 956-1000
10 Facsimile: (415) 956-1008

11 *Attorneys for Plaintiffs Paul Perkins, Pennie Sempell,*
12 *and Clare Connaughton*

DORIAN S. BERGER (SBN 264424)
dberger@olavidunne.com
DANIEL P. HIPSKIND (SBN 266763)
dhipskind@olavidunne.com
OLAVI DUNNE LLP
445 S. Figueroa St., Ste. 3170
Los Angeles, California 90071
Telephone: (213) 516-7900
Facsimile: (213) 516-7910

Attorneys for Plaintiffs Ann Brandwein,
Erin Eggers, Nicole Crosby, Jake
Kushner, Leslie Wall, and Natalie
Richstone

13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN JOSE DIVISION

16 PAUL PERKINS, PENNIE SEMPELL, ANN
17 BRANDWEIN, ERIN EGGERS, CLARE
CONNAUGHTON, JAKE KUSHNER,
18 NATALIE RICHSTONE, NICOLE CROSBY,
and LESLIE WALL, individually and on behalf
of all other similarly situated,

19 Plaintiffs,

20 v.

21 LINKEDIN CORPORATION,

22 Defendant.

Case No. 13-CV-04303-LHK

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES**

Date: August 27, 2015
Time: 1:30 p.m.
Courtroom: 8 – 4th Floor

Judge: Hon. Lucy H. Koh

NOTICE OF MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on August 27, 2015 at 1:30 p.m. or as soon thereafter as counsel may be heard, in the above-entitled Court, Plaintiffs Paul Perkins, Pennie Sempell, Ann Brandwein, Erin Eggers, Clare Connaughton, Jake Kushner, Natalie Richstone, Nicole Crosby, and Leslie Wall will and hereby do move the Court, pursuant to Federal Rule of Civil Procedure 23, for an Order:

1. Granting preliminary approval of a proposed Class Action Settlement Agreement (“Settlement”) entered into between the parties;¹

2. Appointing Lief Cabraser Heimann & Bernstein, LLP, Russ August & Kabat, and Olavi Dunne, LLP as Class Counsel representing the Settlement Class;

3. Appointing Plaintiffs Paul Perkins, Pennie Sempell, Ann Brandwein, Erin Eggers, Clare Connaughton, Jake Kushner, Natalie Richstone, Nicole Crosby, and Leslie Wall as Class Representatives representing the Settlement Class;

4. Approving the parties’ proposed Notice Plan, including the proposed forms of notice, as set forth in the Settlement, and directing that notice be disseminated pursuant to such program;

5. Appointing Gilardi & Co. LLC (“Gilardi”) as the Settlement Administrator, and directing Gilardi to carry out the duties and responsibilities of the Settlement Administrator specified in the Settlement;

6. Approving the parties’ proposed Claim Form, and approving the procedures set forth in the Settlement for Class Members to submit claims, exclude themselves from the Settlement Class and object to the Settlement;

7. Staying all non-Settlement related proceedings in the above-captioned case (the “Action”) pending final approval of the Settlement; and

¹ The Settlement is being submitted as Exhibit 1 to the Declaration of Nicholas Diamand in Support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement, filed herewith. A proposed Order granting Preliminary approval is being submitted herewith.

1 8. Setting a Final Approval Hearing and certain other dates in connection with the final
2 approval of the Settlement.

3 This motion is based on this notice of motion and motion, the accompanying memorandum
4 of points and authorities, the Settlement, including all exhibits thereto, the accompanying
5 declarations of Nicholas R. Diamand, Larry C. Russ, and Dorian S. Berger, the argument of
6 counsel, all papers and records on file in this matter, and such other matters as the Court may
7 consider.

8 Respectfully submitted,
9 Dated: June 11, 2015 LIEFF, CABRASER, HEIMANN & BERNSTEIN, LLP
10 By: /s/ Nicholas R. Diamand
11 Nicholas R. Diamand

12 Michael W. Sobol
13 Nicholas R. Diamand
14 Melissa Gardner
15 275 Battery Street, 29th Floor
16 San Francisco, CA 94111
Telephone: (415) 956-1000
Facsimile: (415) 956-1008
msobol@lchb.com
ndiamand@lchb.com
mgardner@lchb.com

17 Dated: June 11, 2015 RUSS AUGUST & KABAT
18 By: /s/ Larry C. Russ
19 Larry C. Russ

20 Larry C. Russ
21 12424 Wilshire Boulevard, 12th Floor
22 Los Angeles, California 90025
Telephone: (310) 826-7424
Facsimile: (310) 826-6991
lruss@raklaw.com

23 *Attorneys for Plaintiffs Paul Perkins, Pennie Sempell, and Clare*
24 *Connaughton*

25
26
27
28

1 Dated: June 11, 2015

OLAVI DUNNE LLP

2 By: /s/ Dorian S. Berger

3 Dorian S. Berger

4 Dorian S. Berger
5 Daniel P. Hipskind
6 445 S. Figueroa St., Ste. 3170
7 Los Angeles, California 90071
8 Telephone: (213) 516-7900
9 Facsimile: (213) 516-7910
10 dberger@olavidunne.com
11 dhipskind@olavidunne.com

12 *Attorneys for Plaintiffs, Ann Brandwein, Erin Eggers, Nicole*
13 *Crosby, Jake Kushner, and Leslie Wall*

TABLE OF CONTENTS

		Page
1		
2		
3	MEMORANDUM IN SUPPORT OF MOTION.....	1
4	I. INTRODUCTION	1
5	II. BACKGROUND	2
6	A. Procedural History	2
7	B. Proposed Class Counsel’s Investigation and Discovery	3
8	C. Settlement Negotiations	4
9	III. TERMS OF THE SETTLEMENT.....	5
10	A. Provisional Certification of the Settlement Class	5
11	B. Benefits to the Settlement Class.....	5
12	1. The Settlement Fund and Contingent Payment.....	5
13	a. Payments to Settlement Class Members	6
14	b. The Claim Process	7
15	2. Conduct Changes	7
16	C. Notice Plan.....	8
17	1. Direct Email Notice	8
18	2. Settlement Website and Website Notice	8
19	D. Opt-Out Procedure	9
20	E. Opportunity to Object	9
21	F. Payment of Attorneys’ Fees, Costs, and Expenses	9
22	G. Incentive Awards for Class Representatives.....	9
23	H. Release	10
24	IV. LEGAL ARGUMENT.....	10
25	A. Class Action Settlement Procedure.....	10
26	B. The Proposed Settlement Class Should be Certified.....	11
27	1. Rule 23(a) is Satisfied.....	11
28	a. The Class is Too Numerous to Permit Joinder	11
	b. This Action Presents Common Questions	11
	c. Plaintiffs’ Claims are Typical	11
	d. Plaintiffs and Their Counsel Will Fairly and Adequately Protect the Interests of the Settlement Class Members.....	12
	2. The Requirements of Rule 23(b)(3) are Satisfied	12
	C. Standards for Preliminary Settlement Approval	13
	D. The Proposed Settlement Is Within the Range of Reasonableness.....	14
	E. The Proposed Notice Plan Should Be Approved.....	17

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS
(continued)

	Page
F. The Proposed Plan of Distribution is Fair, Reasonable, and Adequate	18
G. The Court Should Set a Final Approval Hearing Schedule	19
V. CONCLUSION	20

TABLE OF AUTHORITIES

	Page
CASES	
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	
<i>Amchem Prods. v. Windsor</i> , 521 U.S. 591 (1997).....	13, 17
<i>Armstrong v. Davis</i> , 275 F.3d 849 (9th Cir. 2001).....	11
<i>Byrd v. Civil Serv. Comm'n</i> , 459 U.S. 1217 (1983).....	13
<i>Churchill Village, LLC v. General Elec.</i> , 361 F.3d 566 (9th Cir. 2004).....	13
<i>City P'shp. Co. v. Atl. Acquisition Ltd. P'shp.</i> , 100 F.3d 1041 (1st Cir. 1996).....	14
<i>Class Plaintiffs v. City of Seattle</i> , 955 F.2d 1268 (9th Cir. 1992).....	10, 13, 14
<i>Create-A-Card, Inc. v. Intuit Inc.</i> , No. 07-6452, 2009 U.S. Dist. LEXIS 93989 (N.D. Cal. Sept. 22, 2009).....	15
<i>Fraley v. Facebook, Inc.</i> , No. 11-1726, 966 F. Supp. 2d 939 (N.D. Cal. 2013).....	10, 15
<i>Hanlon v. Chrysler Corp</i> , 150 F.3d 1011 (9th Cir. 1998).....	11, 12, 14
<i>In re Citric Acid Antitrust Litig.</i> , 145 F. Supp. 2d 1152 (N.D. Cal. 2001).....	18
<i>In re Google Buzz Privacy Litig.</i> , No. 10-00672, 2011 WL 7460099 (N.D. Cal. June 2, 2011).....	15
<i>In re Google Referrer Header Privacy Litig.</i> , No. 10-04809, 2015 WL 1520475 (N.D. Cal. Mar. 31, 2015).....	15
<i>In re Juniper Networks Sec. Litig.</i> , 264 F.R.D. 584 (N.D. Cal. 2009).....	12
<i>In Re LinkedIn User Privacy Litig.</i> , No. 12-03088 (Dkt. No. 136) (N.D. Cal. 2015).....	10
<i>In re NASDAQ Market Makers Antitrust Litig.</i> , 176 F.R.D. 99 (S.D.N.Y. 1997).....	14, 16
<i>In re Netflix Privacy Litig.</i> , No. 11-00379, 2013 WL 1120801 (N.D. Cal. Mar. 18, 2013).....	15
<i>In re Oracle Sec. Litig.</i> , No. 90-0931, 1994 U.S. Dist. LEXIS 21593 (N.D. Cal. June 18, 1994).....	18
<i>In re Pacific Enters. Sec. Litig.</i> , 47 F.3d 373 (9th Cir. 1995).....	13
<i>Jordan v. Cnty. of Los Angeles</i> , 669 F.2d 1311 (9th Cir. 1982).....	11
<i>Linney v. Cellular Alaska P'shp.</i> , No. 96-3008, 1997 U.S. Dist. LEXIS 24300 (N.D. Cal. July 18, 1997).....	15

TABLE OF AUTHORITIES
(continued)

		Page
3	<i>Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.</i> , 244 F.3d 1152 (9th Cir. 2001).....	13
4	<i>Mendoza v. United States</i> , 623 F.2d 1338 (9th Cir. 1980).....	18
5	<i>Officers for Justice v. Civil Serv. Comm’n</i> , 688 F.2d 615 (9th Cir. 1982).....	13
6	<i>Otsuka v. Polo Ralph Lauren Corp.</i> , 251 F.R.D. 439 (N.D. Cal. 2008).....	13
7	<i>Staton v. Boeing Co.</i> , 327 F.3d 938 (9th Cir. 2003).....	12
8	<i>Tait v. BSH Home Appliances Corp.</i> , 289 F.R.D. 466 (C.D. Cal. 2012).....	13
9	<i>Van Bronkhorst v. Safeco Corp.</i> , 529 F.2d 943 (9th Cir. 1976).....	13
10	<i>Wal-Mart Stores, Inc. v. Dukes</i> , 131 S. Ct. 2541 (2011).....	11
11	<i>Wolin v. Jaguar Land Rover North Am., LLC</i> , 617 F.3d 1168 (9th Cir. 2010).....	13

RULES

15	Fed. R. Civ. P. 23(a)(1).....	11
16	Fed. R. Civ. P. 23(a)(3).....	11
17	Fed. R. Civ. P. 23(b)(3).....	13
18	Fed. R. Civ. P. 23(c)(2)(B).....	17
19	Fed. R. Civ. P. 23(e).....	10

OTHER AUTHORITIES

20	1 Newberg § 3.10.....	11
21	4 NEWBERG ON CLASS ACTIONS §§ 11.22, <i>et seq.</i> (4th ed. 2002).....	10, 14, 17
22	Manual for Complex Litigation, Fourth (Fed. Jud. Center 2004), §§ 21.63 <i>et seq.</i>	10, 14
23	The MANUAL FOR COMPLEX LITIGATION (FOURTH) (2004).....	14

MEMORANDUM IN SUPPORT OF MOTION**I. INTRODUCTION**

Plaintiffs and putative Class Representatives Paul Perkins, Pennie Sempell, Ann Brandwein, Erin Eggers, Clare Connaughton, Jake Kushner, Natalie Richstone, Nicole Crosby, and Leslie Wall respectfully submit for the Court's preliminary approval a proposed Class Action Settlement Agreement ("Settlement") resolving the above-captioned Action based on LinkedIn's alleged use of member names and likenesses to grow its member base through a service called "Add Connections." Pursuant to the terms of the Settlement, Defendant LinkedIn Corporation ("LinkedIn") has agreed to pay \$13 million to establish a non-reversionary cash Settlement Fund from which Settlement Class Members who submit valid claims will be sent cash payments. Additionally, LinkedIn has agreed to make significant changes to Add Connections disclosures and functionality. Specifically, LinkedIn has revised disclosures to real-time permission screens presented to members using Add Connections, and has agreed to implement new functionality allowing LinkedIn members to manage their contacts, including viewing and deleting contacts and sending invitations, and stop reminder emails from being sent if they have inadvertently sent connection invitations.

The Settlement is the product of extensive and complex arms-length negotiations between the parties and their experienced and informed counsel, and is fair, reasonable and adequate given the claims, the alleged harm and the parties' respective litigation risks. The Settlement falls well within the "range of reasonableness" applicable at the preliminary approval stage. Defendant does not oppose this motion and will cooperate in the settlement process.

The Settlement provides for an effective, strong notice program, including direct notice, which is well-tailored to provide Settlement Class Members the best notice practicable of the pending Action, the terms of the Settlement, Class Counsel's fee application and Settlement Class Members' opt-out rights and rights to object to the Settlement and/or Class Counsel's fee application.

Plaintiffs and their undersigned counsel believe the Settlement to be in the best interests of the Settlement Class Members and wish to begin the court approval process that is required for all

1 class action settlements. Plaintiffs therefore respectfully request that the Court review the
2 Settlement, which is attached as Exhibit 1 to the accompanying Declaration of Nicholas R Diamand
3 in Support of Motion for Preliminary Approval of Settlement (“Diamand Decl.”), and: (1) grant
4 preliminary approval of the Settlement; (2) certify, for settlement purposes only, the proposed
5 Settlement Class, as defined in the Settlement; (3) appoint Larry Russ of Russ August & Kabat;
6 Michael Sobol, Nicholas Diamand, and Melissa Gardner of Lieff Cabraser Heimann & Bernstein,
7 LLP; and Dorian Berger and Daniel Hipskind of Olavi Dunne LLP, as Class Counsel representing
8 the Settlement Class; (4) appoint Paul Perkins, Pennie Sempell, Ann Brandwein, Erin Eggers, Clare
9 Connaughton, Jake Kushner, Natalie Richstone, Nicole Crosby, and Leslie Wall as Class
10 Representatives representing the Settlement Class; (5) approve the parties’ proposed Notice Plan,
11 including the proposed forms of notice, as set forth in the Settlement, and direct that notice be
12 disseminated pursuant to such program; (6) appoint Gilardi & Co. LLC (“Gilardi”) as the
13 Settlement Administrator, and direct Gilardi to carry out the duties and responsibilities of the
14 Settlement Administrator specified in the Settlement; (7) approve the parties’ proposed Claim
15 Form, and approve the procedures set forth in the Settlement for Class Members to submit claims,
16 exclude themselves from the Settlement Class, and/or object to the Settlement; (8) stay all
17 non-Settlement related proceedings in the Action pending final approval of the Settlement; and (9)
18 schedule a hearing pursuant to Rule 23(e) of the Federal Rules of Civil Procedure to determine
19 whether the proposed Settlement is fair, reasonable, and adequate and should be finally approved.²

20 **II. BACKGROUND**

21 **A. Procedural History**

22 On September 17, 2013, Plaintiffs Paul Perkins, Pennie Sempell, Ann Brandwein, and Erin
23 Eggers brought this action against LinkedIn Corporation, asserting violations of (1) California’s
24 common law right of publicity; (2) California’s Unfair Competition Law (Cal. Bus. & Prof. Code
25 §§ 17200, *et seq.*) (the “UCL”); (3) the Stored Communications Act, 18 U.S.C. §§ 2701, *et seq.*; (4)

26
27 ² Prior to final approval and the deadline for objections to the Settlement, Plaintiffs will also move
28 for a Fee Award for payment of litigation costs, attorneys’ fees, and an Incentive Award for each of
the proposed Class Representatives.

1 the federal Wiretap Act, 18 U.S.C. §§ 2510, *et seq.*; (5) California Penal Code § 502; and (6) the
2 California Invasion of Privacy Act, Cal. Penal Code §§ 630, *et seq.*, based on LinkedIn's alleged
3 use of Add Connections to grow its member base. (Dkt. No. 1). On October 2, 2013, Plaintiffs
4 filed their First Amended Complaint ("FAC"), adding Plaintiffs Clare Connaughton, Jake Kushner,
5 Natalie Richstone, Nicole Crosby, and Leslie Wall as Named Plaintiffs, asserting the same claims
6 but dropping the California Invasion of Privacy Act claims. (Dkt. No. 7). On December 6, 2013,
7 LinkedIn filed a motion to dismiss the FAC, and in the alternative to strike the class allegations.
8 (Dkt. No. 17). After full briefing and oral argument, on June 12, 2014, the Court granted in part and
9 denied in part LinkedIn's motion to dismiss the FAC, and granted Plaintiffs leave to file a Second
10 Amended Complaint ("SAC"). (Dkt. No. 47). On August 28, 2014, Plaintiffs filed the SAC,
11 alleging violations of Plaintiffs' California common law and statutory rights of publicity, and the
12 UCL. (Dkt. No. 55). On September 18, 2014, LinkedIn moved to dismiss the SAC. (Dkt. No. 60).
13 After full briefing and oral argument, on November 13, 2014, the Court granted in part and denied
14 in part LinkedIn's motion to dismiss the SAC, and granted Plaintiffs leave to file a Third Amended
15 Complaint ("TAC"). (Dkt. No. 69). On December 5, 2014, Plaintiffs filed the TAC, again alleging
16 violation of Plaintiffs' California common law and statutory rights of publicity, and the UCL. The
17 TAC seeks declaratory, monetary, injunctive and other equitable relief against LinkedIn, as well as
18 statutory damages pursuant to California Civil Code § 3344. (Dkt. No. 70). On January 9, 2015,
19 LinkedIn answered the TAC. (Dkt. No. 73). At all times, LinkedIn has denied and continues to
20 deny that it committed any wrongful act or violation of law or duty alleged in the Action.

21 **B. Proposed Class Counsel's Investigation and Discovery**

22 Proposed Class Counsel conducted significant discovery and an extensive investigation
23 regarding the issues in the Action, prior to entering into the Settlement. Before filing suit, proposed
24 Class Counsel conducted a thorough investigation, including reviewing and analyzing LinkedIn's
25 website and marketing materials, reviewing LinkedIn's purported terms of service and the methods
26 by which such terms were communicated to consumers, speaking with numerous LinkedIn users
27 about their experiences with LinkedIn's website, and also reviewing publicly-available reports by
28 users regarding their experience. (Declaration of Larry C. Russ ("Russ Decl.") ¶ 3; Declaration of

1 Dorian S. Berger (“Berger Decl.”) ¶ 3.) Moreover, proposed Class Counsel have conducted
2 extensive ongoing factual investigation and legal research regarding the issues in the Action,
3 including in connection with opposing two motions by LinkedIn to dismiss. (Russ Decl. ¶ 3-4;
4 Berger Decl. ¶ 5; Diamand Decl. ¶ 9.) Further, proposed Class Counsel have taken discovery,
5 including service of two sets of Requests for Production, and have reviewed all responsive
6 documents produced by Defendant. At the time this Settlement was achieved, Class Counsel were
7 prepared to notice the depositions of eight senior LinkedIn employees. (Diamand Decl. ¶ 9.)

8 **C. Settlement Negotiations**

9 Plaintiffs and LinkedIn first engaged in formal mediated negotiations on August 26, 2014,
10 with the Honorable A. Howard Matz (ret.) in Los Angeles, California. After a full day of
11 mediation, the matter was not resolved. (Diamand Decl. ¶ 10.) The parties held a second mediation
12 on January 13, 2015, with Mr. Antonio Piazza of Mediated Negotiations in San Francisco,
13 California. (*Id.* ¶ 11; Ex. 3, Declaration of Antonio Piazza (“Piazza Decl.”) ¶ 3.) After another
14 day-long mediation, the parties accepted a mediator’s proposal for a class action settlement subject
15 to reaching agreement on remaining material terms and execution of the settlement agreement.
16 (Diamand Decl. ¶ 11; Ex. 3 (Piazza Decl. ¶ 5.))

17 Following the January 13, 2015 mediation session, the Parties reached an agreement in
18 principle on remaining material terms and finalized a term sheet in late March 2015. Thereafter, a
19 written settlement agreement was prepared. Plaintiffs and Defendant exchanged several drafts of
20 the final settlement agreement and related settlement documents before the parties came to final
21 agreement as to each. (Diamand Decl. ¶ 12.) At all times during the negotiation process, counsel
22 for Plaintiffs and LinkedIn bargained vigorously and at arm’s length on behalf of their clients. (*Id.*
23 ¶ 14.) All Named Plaintiffs support this Settlement. The parties have worked closely with the
24 Settlement Administrator to design an effective and successful notice program. (Diamand Decl. ¶
25 16.)

1 **III. TERMS OF THE SETTLEMENT**

2 The Settlement resolves the claims of Plaintiffs and the Settlement Class against LinkedIn.
3 The details are contained in Settlement. (Diamand Decl., Ex. 1.) The key terms of the Settlement
4 are described below.

5 **A. Provisional Certification of the Settlement Class**

6 Plaintiffs seek provisional certification of a Settlement Class,³ defined in the Settlement as:

7 all current and former LinkedIn members who used Add Connections to import information
8 from external email accounts and to send emails to persons who were non-members in which the
9 member's name, photograph, likeness and/or identity was displayed between September 17, 2011
10 and October 31, 2014. Excluded from the Settlement Class are the following: (1) Defendant, its
11 subsidiaries, and affiliates and their respective officers, directors and employees, (2) Class Counsel
12 and Defendant's Counsel, and (3) any judicial officer to whom the Action is assigned.

11 **B. Benefits to the Settlement Class**

12 **1. The Settlement Fund and Contingent Payment**

13 Pursuant to the terms of the Settlement, LinkedIn will establish a Settlement Fund of \$13
14 Million Dollars to be used for: (a) providing compensation to Settlement Class Members; and (b)
15 payment of all Settlement Administration and Notice Expenses, including the costs of
16 disseminating notice, processing Claim Forms, objections, and requests for exclusion,
17 administering payments to Settlement Class Members, and other costs incurred in performing the
18 obligations of the Settlement Administrator. (Settlement, §§ 1.34, 2.1.1.) Any Fee Award to Class
19 Counsel and Incentive Awards for the Plaintiffs that are awarded by the Court shall be paid from
20 the Settlement Fund. (Settlement, § 8.1.1.) If the portion of the Settlement Fund available for
21 payments to Authorized Claimants (the "Net Settlement Fund"), is insufficient to allow for *pro rata*
22 payments of at least \$10 to each Authorized Claimant, LinkedIn will make an additional
23 Contingent Payment of up to \$750,000 to increase the amount of such *pro rata* payments to
24 Authorized Claimants to a maximum of \$10. (Settlement, § 2.1.2.)

25
26 ³ The Class alleged in the complaints includes persons who were LinkedIn members and used Add
27 Connections as of May 15, 2013. Because additional disclosures were implemented through
28 LinkedIn's website in Fall 2014, including the prospective relief described in Section 2.2 of the
Settlement Agreement, the Settlement Class extends to October 31, 2014.

1 **a. Payments to Settlement Class Members**

2 Pursuant to the Plan of Distribution (Settlement, § 3.1), Settlement Class Members who
3 timely submit a valid Claim Form (“Authorized Claimants”) shall be sent via either (1) a physical
4 mailed check, valid for ninety days, or (2) ACH transfer (direct deposit). (Settlement, §§
5 3.1.2(a)-(b).) The Authorized Claimant may elect the form of payment on his or her Claim Form.
6 (Settlement, Ex. A (Claim Form).)

7 Payments from the Settlement Fund and any Contingent Payment shall be distributed *pro*
8 *rata* to each Authorized Claimant based on the number of Authorized Claimants within sixty (60)
9 days after the Final Settlement Date. If the Net Settlement Fund and the Contingent Payment
10 together are insufficient to produce *pro rata* payments of at least \$10 to each Authorized Claimant,
11 the Net Settlement Fund and Contingent payment shall be distributed to each Authorized Claimant
12 *pro rata*, if it is economically feasible to do so. (Settlement, §§ 2.1.2; 3.1.3.) If the number of
13 Authorized Claimants results in a *pro rata* share of the Net Settlement Fund and any Contingent
14 Payment that the Parties, in consultation with the Settlement Administrator and the mediator,
15 Antonio Piazza, believe is not economically feasible to distribute any funds *pro rata* to Authorized
16 Claimants, Class Counsel will submit for Court approval as part of the Final Order and Judgment an
17 alternative plan of distribution under which the Settlement Administrator will distribute the Net
18 Settlement Fund and Contingent Payment to the *Cy Pres* Recipients. *Id.* As identified in the
19 Settlement, the three *Cy Pres* Recipients are (1) Access Now, which describes itself as “an
20 international human rights organization premised on the belief that the realization of human rights
21 and democracy in the twenty- first century is increasingly predicated on access to the internet and
22 other forms of information communication technology;”⁴ (2) Electronic Privacy Information
23 Center, which describes itself as “an independent non-profit research center in Washington, DC
24 [that] works to protect privacy, freedom of expression, democratic values, and to promote the
25 Public Voice in decisions concerning the future of the Internet;”⁵ and (3) the Network for Teaching

26 _____
27 ⁴ See Access Now, *About Us*, <https://www.accessnow.org/> (last visited on June 8, 2015).

28 ⁵ See Electronic Privacy Information Center, *About EPIC*, <https://epic.org/epic/about.html> (last visited on June 8, 2015).

1 Entrepreneurship, which describes its mission as “provid[ing] programs that inspire young people
2 from low-income communities to stay in school, to recognize business opportunities and to plan for
3 successful futures.”⁶

4 Any funds from checks not cashed within ninety days of issuance and funds from failed
5 ACH transfers shall revert to the Settlement Fund. (Settlement, § 3.1.2(b).) If, in consultation with
6 the Settlement Administrator, the Parties determine that any such reverted funds can be distributed
7 *pro rata* to other Authorized Claimants in a way that is economically feasible, such funds shall be
8 distributed accordingly. *Id.* If not, any such reverted funds shall be distributed by the Settlement
9 Administrator *pro rata* to the *Cy Pres* Recipients. *Id.*

10 Should the Settlement be finally approved, no portion of the Settlement Fund will revert to
11 LinkedIn.

12 **b. The Claim Process**

13 All Settlement Class Members may submit claims for settlement payments. Settlement
14 Class Members will have the option of submitting claims electronically via the Settlement Website
15 or by mail. (Settlement, § 5.1.2; Settlement, Ex. A.) The Claim Form will be substantially in the
16 form attached as Exhibit A to the Settlement. The deadline for submitting claims will be 60 days
17 after the Notice Date. (Settlement, §§ 1.6, 3.2.1.)

18 The Settlement Administrator will process claims, and will reject claims where the person
19 submitting the Claim Form does not appear to be a Settlement Class Member. (Settlement, § 3.2.2.)
20 If a submitted Claim Form fails to comply with the instructions thereon or the terms of the
21 Settlement, the Settlement Administrator shall provide the Authorized Claimant a reasonable
22 opportunity of twenty-one days after being noticed by the Settlement Administrator of any question
23 or deficiency to provide any missing information requested. (Settlement, § 3.2.4.)

24 **2. Conduct Changes**

25 In addition to the monetary relief provided for in the Settlement, LinkedIn has agreed to
26 make significant practice changes for its operations in the United States. These include improving

27 _____
28 ⁶ See Network for Teaching Entrepreneurship, *Mission*, <http://www.nfte.com/what/mission> (last visited on June 8, 2015).

1 the disclosures on LinkedIn’s website, including by informing users on the *Add Connections*
2 *Import* screen that LinkedIn will “import your address book to suggest connections,” and, on the
3 *Add Connections Invitations* permission screen, that “[i]f someone you invite doesn’t respond right
4 away, we’ll send up to two reminders.” (Settlement, § 2.2.) Additionally, LinkedIn has
5 implemented functionality allowing members to manage contacts, including viewing and deleting
6 contacts and sending invitations, and has agreed to implement functionality allowing members who
7 inadvertently send connection invitations to withdraw those invitations. (*Id.*)

8 **C. Notice Plan**

9 The Settlement includes a Notice Plan that is well-designed to give Class Members the best
10 notice practicable of the Settlement, the claims process and deadline, Class Counsel’s fee
11 application, and their opt-out and objection rights. As set forth below, the Notice Plan will be
12 administered with the help of an independent, and highly qualified, Settlement Administrator, and
13 will consist of several parts. (Settlement, § 5.1; *see also* Diamand Decl., Ex. 4 (Declaration of Alan
14 Vasquez, of Gilardi).) The Notice Plan shall be completed no later than thirty days after entry of
15 the Preliminary Approval Order. (Settlement, § 5.1.3.)

16 **1. Direct Email Notice**

17 By the Notice Date, LinkedIn will send or cause to be sent the Email Notice, substantially in
18 the form attached as Exhibit B to the Settlement, to each Person in the Settlement Class using the
19 email address that LinkedIn has on file for their LinkedIn account. For emails that immediately
20 result in a bounce-back or are otherwise undeliverable, an attempt to re-send the Email Notice prior
21 to the Notice Date will be made. (Settlement, § 5.1.1.)

22 **2. Settlement Website and Website Notice**

23 With the involvement and approval of the Parties, the Settlement Administrator will publish
24 the Website Notice, substantially in the form attached as Exhibit C to the Settlement, through the
25 Settlement Website. The Settlement Website shall be developed, hosted, and maintained by the
26 Settlement Administrator and shall provide Settlement Class Members with the ability to submit
27 Claim Forms and exclusion requests electronically. (Settlement, § 5.1.2.)
28

1 **D. Opt-Out Procedure**

2 Any person within the definition of the Settlement Class may request to be excluded from
3 the Settlement Class by sending a written request to the Settlement Administrator postmarked on or
4 before a date no later than 60 days after the Notice date (the “Objection/Exclusion Deadline”)
5 (Settlement, §§ 1.25, 6.2.) Valid requests must include the information prescribed by the Notice,
6 including a statement that the person sending the request wishes to be excluded from the Settlement
7 Class. (Settlement, § 6.2.)

8 **E. Opportunity to Object**

9 Any person within the definition of the Settlement Class who does not timely and validly
10 request to be excluded may object to the Settlement, Class Counsel’s fee application, and/or the
11 requests for Incentive Awards for the Class Representatives. (Settlement, § 6.3.) To be considered,
12 an objection must be submitted to the Court either by mailing it to the Class Action Clerk, or by
13 filing it with the Court, and must be in writing, personally signed by the objector, and include the
14 information prescribed by the Notice. (Settlement, § 6.3.)

15 **F. Payment of Attorneys’ Fees, Costs, and Expenses**

16 Class Counsel is entitled to petition the Court for reasonable attorneys’ fees, costs, and
17 expenses, up to a maximum of 25% of the Settlement Fund. (Settlement, §8.1.) Should the Court
18 award less than the amount sought in the petition, the difference between the amount sought and the
19 amount awarded shall remain in the Settlement Fund to pay Authorized Claimants or, if such is not
20 economically feasible, to be given to the *Cy Pres* Recipients. (Settlement, § 8.1.1.)

21 **G. Incentive Awards for Class Representatives**

22 Class Counsel are entitled to petition the Court for an Incentive Award in the amount of
23 \$1,500 for each Class Representative. (Settlement, § 8.2.) Should the Court award less than the
24 amount sought in the petition, the difference between the amount sought and the amount awarded
25 shall remain in the Settlement Fund to pay Authorized Claims or be given to the *Cy Pres*
26 Recipients. (Settlement, § 8.2.1.)

27
28

1 **H. Release**

2 In exchange for the benefits provided pursuant to the Settlement, Plaintiffs and Settlement
 3 Class Members will release LinkedIn and related persons and entities (“Released Parties”) from all
 4 claims that were or could have been asserted arising from or related to allegations in the Action
 5 regarding the alleged use of Add Connections to grow LinkedIn’s member base including, without
 6 limitation, (i) accessing, importing, storing and/or using information from LinkedIn members’
 7 external email accounts; (ii) using LinkedIn members’ names, photographs, likenesses, and/or
 8 identities in emails relating to Add Connections; or (iii) related disclosures, representations, and
 9 omissions. (Settlement, §§ 1.29-1.31, 4.1.)

10 **IV. LEGAL ARGUMENT**

11 **A. Class Action Settlement Procedure**

12 A class action may not be dismissed, compromised, or settled without the approval of the
 13 Court. Fed. R. Civ. Proc. 23(e); *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1289 (9th Cir.
 14 1992); *see also Fraley v. Facebook, Inc.*, No. 11-1726, 966 F. Supp. 2d 939 (N.D. Cal. 2013); *In Re*
 15 *LinkedIn User Privacy Litig.*, No. 12-03088 (Dkt. No. 136) (N.D. Cal. 2015). Judicial proceedings
 16 under Federal Rule of Civil Procedure 23 have led to a defined three-step procedure for approval of
 17 class action settlements:

- 18 (1) Certification of a settlement class and preliminary approval
 19 of the proposed settlement after submission to the Court of a
 20 written motion for preliminary approval.
- 21 (2) Dissemination of notice of the proposed settlement to the
 22 affected class members.
- 23 (3) A formal fairness hearing, or final settlement approval
 24 hearing, at which evidence and argument concerning the
 25 fairness, adequacy, and reasonableness of the settlement are
 26 presented.

27 *See* Manual for Complex Litigation, Fourth (Fed. Jud. Center 2004), §§ 21.63 *et seq.* This
 28 procedure safeguards class members’ procedural due process rights and enables the Court to fulfill
 its role as the guardian of class interests. *See 4 Newberg on Class Actions* §§ 11.22, *et seq.* (4th ed.
 2002) (“*Newberg*”) (describing class action settlement procedure).

1 By way of this motion, Plaintiffs request that the Court take the first step in the settlement
2 approval process and preliminarily approve the proposed Settlement.

3 **B. The Proposed Settlement Class Should be Certified**

4 Certification of the Settlement Class for settlement purposes is appropriate because Rule
5 23(a) and Rule 23(b)(3) are satisfied.

6 **1. Rule 23(a) is Satisfied.**

7 **a. The Class is Too Numerous to Permit Joinder**

8 A case may be certified as a class action only if “the class is so numerous that joinder of all
9 members is impracticable.” Fed. R. Civ. P. 23(a)(1). While there is no fixed rule, a class with at
10 least 40 members is generally sufficiently large. *Jordan v. Cnty. of Los Angeles*, 669 F.2d 1311,
11 1319 (9th Cir. 1982), *vacated on other grounds*, 459 U.S. 810 (1982). As of June 9, 2015, the
12 Settlement Class includes an estimated 20.8 million current and former LinkedIn users. (Diamand
13 Decl. ¶ 13).

14 **b. This Action Presents Common Questions**

15 Rule 23(a)(2) requires that there be one or more questions common to the class. *See Hanlon*
16 *v. Chrysler Corp*, 150 F.3d 1011, 1019 (9th Cir. 1998); 1 Newberg § 3.10; *see also Wal-Mart*
17 *Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2556 (2011). The claims in the Action raise common
18 questions, including whether Defendant’s use of member names and profile pictures to grow
19 LinkedIn’s member base through Add Connections violated California law, and whether there was
20 consent for such use.

21 **c. Plaintiffs’ Claims are Typical**

22 Rule 23(a)(3) requires that “the claims and defenses of the representative parties are typical
23 of the claims or defenses of the class.” Fed. R. Civ. P. 23(a)(3). Typicality does not require total
24 identity between representative plaintiffs and class members. *Armstrong v. Davis*, 275 F.3d 849,
25 869 (9th Cir. 2001). Rather, typicality is satisfied so long as the named plaintiffs’ claims stem
26 “from the same event, practice, or course of conduct that forms the basis of the class claims, and is
27 based upon the same legal theory.” *Jordan*, 669 F.2d at 1322; *In re Juniper Networks Sec. Litig.*,

28

1 264 F.R.D. 584, 589 (N.D. Cal. 2009) (“representative claims are ‘typical’ if they are reasonably
2 co-extensive with those of absent class members”) (citation omitted).

3 Here, the Plaintiffs’ claims stem from the same common course of conduct as the claims of
4 the Settlement Class Members. All Plaintiffs and all Class Members utilized LinkedIn’s Add
5 Connections feature and had emails sent on their behalf by LinkedIn inviting their contacts to join
6 the social networking site. The typicality requirement is thus satisfied here.

7 **d. Plaintiffs and Their Counsel Will Fairly and Adequately Protect**
8 **the Interests of the Settlement Class Members**

9 Rule 23(a)(4) requires that the representative plaintiffs will “fairly and adequately” protect
10 the interests of the class. The two-prong test for determining adequacy is: “(1) Do the
11 representative plaintiffs and their counsel have any conflicts of interest with other class members?;
12 and (2) will the representative plaintiffs and their counsel prosecute the action vigorously on behalf
13 of the class?” *Staton v. Boeing Co.*, 327 F.3d 938, 957 (9th Cir. 2003); *Hanlon*, 150 F.3d at 1020.
14 Both prongs are satisfied here.

15 First, the Plaintiffs’ interests are aligned with, and not antagonistic to, the interests of the
16 Settlement Class Members. Plaintiffs have the same interest as all Settlement Class Members in
17 obtaining redress. *See Hanlon*, 150 F.3d at 1021 (adequacy satisfied where “each...plaintiff has the
18 same problem”). Second, proposed Class Counsel have extensive experience litigating and settling
19 class actions, including consumer cases. They have demonstrated expertise in handling all aspects
20 of complex litigation and class actions, and are well qualified to represent the Settlement Class.
21 (Diamand Decl., ¶¶ 7-8, Ex. 2; Russ Decl., ¶¶ 2-5; Berger Decl. ¶¶ 7-9.) Moreover, Plaintiffs and
22 proposed Class Counsel remain fully committed to advancing the interests of, and obtaining relief
23 for, the Settlement Class Members, as evidenced by the terms of the proposed Settlement.

24 **2. The Requirements of Rule 23(b)(3) are Satisfied**

25 In addition to the requirements of Rule 23(a), at least one of the prongs of Rule 23(b) must
26 be satisfied. Here, the proposed Settlement Class satisfies Rule 23(b)(3), which permits a class
27 action if the Court finds that “questions of law or fact common to class members predominate over
28 any questions affecting only individual members, and that a class action is superior to other

1 available methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3).
2 Common issues predominate here. That is particularly so given that, if the proposed Settlement is
3 approved, there will be no need for a trial, and thus manageability of the classes for trial need not be
4 considered. *See Amchem Prods. v. Windsor*, 521 U.S. 591, 620 (1997).

5 Moreover, a class action is superior to other methods of litigation where, as here, class
6 treatment will promote greater efficiency and no realistic alternative exists. *See Local Joint Exec.*
7 *Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.*, 244 F.3d 1152, 1163 (9th Cir.
8 2001); *Otsuka v. Polo Ralph Lauren Corp.*, 251 F.R.D. 439, 448 (N.D. Cal. 2008). Individual
9 prosecution of the claims in these cases is impractical. *Tait v. BSH Home Appliances Corp.*, 289
10 F.R.D. 466, 486 (C.D. Cal. 2012) (“superiority requirement is met ‘[w]here recovery on an
11 individual basis would be dwarfed by the cost of litigating on an individual basis.’”) (quoting *Wolin*
12 *v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1175 (9th Cir. 2010)).

13 For all the reasons stated above, Plaintiffs respectfully submit that the Court should approve
14 certification of the proposed Settlement Class.

15 **C. Standards for Preliminary Settlement Approval**

16 Rule 23(e) requires that any settlement of claims brought on a class basis be approved by
17 the Court. “[T]here is an overriding public interest in settling and quieting litigation . . . particularly
18 . . . in class action suits[.]” *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976); *see*
19 *also Churchill Village, LLC v. General Elec.*, 361 F.3d 566, 576 (9th Cir. 2004); *In re Pacific*
20 *Enters. Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995); *City of Seattle*, 955 F.2d at 1276. Courts
21 recognize that as a matter of sound policy, settlements of disputed claims are encouraged and a
22 settlement approval hearing should “not . . . be turned into a trial or rehearsal for trial on the merits.”
23 *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 625 (9th Cir. 1982), *cert. denied sub nom.*
24 *Byrd v. Civil Serv. Comm’n*, 459 U.S. 1217 (1983). Furthermore, courts must give “proper
25 deference” to the settlement agreement, because “the court’s intrusion upon what is otherwise a
26 private consensual agreement negotiated between the parties to a lawsuit must be limited to the
27 extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or
28 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a

1 whole, is fair, reasonable and adequate to all concerned.” *Hanlon*, 150 F.3d at 1027 (quotation
2 omitted).

3 The purpose of the Court’s preliminary evaluation of the proposed settlement is to
4 determine whether it is within “the range of reasonableness,” and thus whether notice to the class of
5 the terms and conditions of the settlement, and the scheduling of a formal fairness hearing, are
6 worthwhile. Preliminary approval should be granted where “the proposed settlement appears to be
7 the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not
8 improperly grant preferential treatment to class representatives or segments of the class and falls
9 within the range of possible approval.” *In re NASDAQ Market Makers Antitrust Litig.*, 176 F.R.D.
10 99, 102 (S.D.N.Y. 1997). Application of these factors here support an order granting the motion for
11 preliminary approval.

12 To grant preliminary approval of the proposed Settlement, the Court need only find that it
13 falls within “the range of reasonableness.” *Newberg* § 11.25. The Manual for Complex Litigation
14 (Fourth) (2004) (“*Manual*”) characterizes the preliminary approval stage as an “initial evaluation”
15 of the fairness of the proposed settlement made by the court on the basis of written submissions and
16 informal presentation from the settling parties. *Manual* § 21.632. A proposed settlement may be
17 *finally* approved by the trial court if it is determined to be “fundamentally fair, adequate, and
18 reasonable.” *City of Seattle*, 955 F.2d at 1276 (quotation omitted). While consideration of the
19 requirements for *final* approval is unnecessary at this stage, all of the relevant factors weigh in favor
20 of the Settlement proposed here. As shown below, the proposed Settlement is fair, reasonable and
21 adequate. Therefore, the Court should allow the proposed Notice Plan to go forward.

22 **D. The Proposed Settlement Is Within the Range of Reasonableness**

23 The proposed Settlement meets the standards for preliminary approval. First, the
24 Settlement is entitled to “an initial presumption of fairness” because it is the result of arm’s-length
25 negotiations among experienced counsel, facilitated by an experienced and respected mediator,
26 occurring after the parties completed significant formal and informal fact discovery. Piazza Decl. ¶
27 7; see also *Newberg* § 11.41; *City P’shp. Co. v. Atl. Acquisition Ltd. P’shp.*, 100 F.3d 1041, 1043
28 (1st Cir. 1996) (“When sufficient discovery has been provided and the parties have bargained at

1 arms-length, there is a presumption in favor of the settlement.”); *Create-A-Card, Inc. v. Intuit, Inc.*,
2 No. 07-6452, 2009 U.S. Dist. LEXIS 93989, at *8-9 (N.D. Cal. Sept. 22, 2009) (“This Court begins
3 its analysis with a presumption that a class settlement is fair and should be approved if it is the
4 product of arm’s-length negotiations conducted by capable counsel with extensive experience in
5 complex class action litigation.”); *Linney v. Cellular Alaska P’shp*, No. 96-3008, 1997 U.S. Dist.
6 LEXIS 24300, at *16 (N.D. Cal. July 18, 1997) (“The involvement of experienced class action
7 counsel and the fact that the settlement agreement was reached in arm’s length negotiations, after
8 relevant discovery had taken place create a presumption that the agreement is fair.”), *aff’d*, 151
9 F.3d 1234 (9th Cir. 1998).

10 Second, the Settlement also provides for well-tailored, and important, conduct changes that
11 will benefit and protect millions of Settlement Class Members and others going forward. The
12 Settlement requires very specific disclosures which will enable consumers to make an informed
13 decision about use of the Add Connections service in the future. In addition, the Settlement
14 provides for changes to LinkedIn’s functionality to give Settlement Class Members control over the
15 emails sent through Add Connections. This injunctive relief is of significant value.

16 Third, the consideration—a \$13 million cash fund, with a potential additional payment of
17 up to \$750,000, for a class of approximately 20.8 million—is substantial, particularly in light of the
18 very real risk that the jury could find no liability or award no damages, and any jury verdict would
19 be subject to appellate review. A relevant point of comparison is with the outcome achieved in
20 *Fralely v. Facebook, Inc.*, No. 11-1726 (N.D. Cal.), in which the parties, as here, reached a
21 settlement agreement after this Court had denied a motion to dismiss, but prior to class certification.
22 In *Fralely*, the court approved a settlement providing for a \$20 million cash fund where the class
23 size was an estimated 124 million Facebook members. *See also In re Google Referrer Header*
24 *Privacy Litig.*, No. 10-04809, 2015 WL 1520475 (N.D. Cal. Mar. 31, 2015) (Davila, J.) (granting
25 final approval to \$8.5 million settlement in case with estimated 129 million class members); *In re*
26 *Netflix Privacy Litig.*, No. 11-00379, 2013 WL 1120801 (N.D. Cal. Mar. 18, 2013) (Davila, J.)
27 (granting final approval to \$9 million settlement in case with estimated 62 million class members);
28 *In re Google Buzz Privacy Litig.*, No. 10-00672, 2011 WL 7460099 (N.D. Cal. June 2, 2011) (Ware,

1 J.) (granting final approval to \$8.5 million settlement in case with estimated 37 million class
2 members).

3 Fourth, the Settlement does not grant preferential treatment to the Class Representatives or
4 to certain portions of the Settlement Class; the Plan of Distribution provides a neutral and fair way
5 to compensate Settlement Class members. *In re NASDAQ Market Makers Antitrust Litig.*, 176
6 F.R.D. at 102.

7 Fifth, while settlement provides the Settlement Class with a timely and meaningful cash
8 recovery, the outcome of a trial—and any subsequent appeals—is highly uncertain, and in any
9 event would substantially delay any recovery achieved. Liability remains disputed in the case, as
10 does the question of whether claims of the putative Settlement Class should be certified.

11 Throughout this litigation, LinkedIn has vigorously contested both its liability and
12 Plaintiffs' ability to certify the asserted claims for class treatment. LinkedIn argues that its terms of
13 service and privacy policies, as well as LinkedIn users' knowledge based upon receipt of invitation
14 emails and reminders from other members, are sufficient for a jury to find that members of the
15 proposed Class consented to the conduct challenged by Plaintiffs. LinkedIn also argues that the
16 single publication rule may prevent Plaintiffs from challenging reminder emails separately from
17 initial invitation emails on the grounds that the communications constituted a "single integrated
18 publication." LinkedIn also intended to vigorously contest class certification on the theory that
19 consent and injury are inherently individualized issues, for example by arguing that, implied
20 consent turns on the individual experience and exposure of each Class member, and that no model
21 exists for calculating the fair market value of each Class member's name or likeness used in
22 reminder emails on a class-wide basis.

23 Here, the jury would be faced with many complicated and contentious issues regarding
24 impact and damages across the Class. Even if Plaintiffs succeeded in obtaining class certification,
25 and subsequently in proving LinkedIn's liability to the Class, they still faced the risk that the jury
26 would award only a fraction of the alleged damages—or refuse to award damages altogether. And,
27 even if Plaintiffs were successful at trial, Plaintiffs and the Class faced the risk of protracted
28 appeals.

1 While Plaintiffs believe that they can overcome these defenses, they are indicative of the
2 risks, hurdles, and delays that Plaintiffs and the Class face should this matter proceed in litigation.
3 The proposed Settlement provides considerable monetary and injunctive relief for Settlement Class
4 Members while allowing them to avoid the risks of unfavorable, and in some cases dispositive,
5 rulings on these and other issues.

6 **E. The Proposed Notice Plan Should Be Approved.**

7 Rule 23(e)(1) states that, “[t]he court must direct notice in a reasonable manner to all class
8 members who would be bound by a proposed settlement, voluntary dismissal, or compromise.”
9 Notice of a proposed settlement must inform class members of the following: (1) the nature of the
10 pending litigation; (2) the general terms of the proposed settlement; (3) that complete information is
11 available from the court files; and (4) that any class member may appear and be heard at the fairness
12 hearing. *See Newberg* § 8.32. The notice must also indicate an opportunity to opt-out, that the
13 judgment will bind all class members who do not opt-out, and that any member who does not
14 opt-out may appear through counsel. Fed. R. Civ. P. 23(c)(2)(B). The form of notice is “adequate
15 if it may be understood by the average class member.” *Newberg* § 11.53. Notice to the class must
16 be “the best notice practicable under the circumstances, including individual notice to all members
17 who can be identified through reasonable effort.” *Amchem Prods.*, 521 at 617 (quotation omitted).

18 Within thirty days after the Court grants preliminary approval, Class Counsel and LinkedIn
19 have agreed that LinkedIn will send or cause to be sent Email Notice, substantially in the form
20 attached as Exhibit B to the Settlement Agreement, to each person in the Settlement Class using the
21 email address that LinkedIn has on file for their LinkedIn account. (Settlement, § 5.1.) For emails
22 that result in a bounce-back or are otherwise undeliverable, an attempt shall be made to re-send the
23 Email Notice once prior to the Notice Date. (Settlement, § 5.1.1.)

24 With the involvement and approval of the Parties, the Settlement Administrator shall
25 publish the Website Notice, substantially in the form attached as Exhibit C to the Settlement
26 Agreement, through the Settlement Website. The Settlement Website shall be developed, hosted,
27 and maintained by the Settlement Administrator and shall include the ability to submit Claim
28 Forms electronically. (Settlement, § 5.1.2.)

1 Class members shall have sixty days from the date the Notice period begins (the “Claims
2 Deadline”) to submit Claim Forms for compensation under the Settlement. (Settlement, §§ 1.6,
3 3.2.1.) Any Settlement Class Member who wishes to be excluded from the Settlement Class must
4 send a written request for exclusion to the Court no later than sixty days after the Notice Date, or
5 such other date as ordered by the Court. (Settlement, § 6.3.)

6 The content of the Email Notice and Website Notice fully comply with due process and
7 Rule 23. (Settlement, Exs. B-C.) They provide the definition of the Settlement Class, describe the
8 nature of the action, including the class allegations, and explain the procedure for opting out and
9 making objections. *Id.* The Email and Website Notice describe the terms of the Settlement, and
10 advise Settlement Class members that funds from the Settlement Fund will be distributed at a future
11 time, and in an amount, to be determined. *Id.* The Email Notice and Website Notice specify the
12 date, time, and place of the Final Approval Hearing, and inform Settlement Class members that
13 they may enter an appearance through counsel. *Id.* The Email Notice and Website Notice also
14 inform Settlement Class members how to exercise their rights and make informed decisions
15 regarding the proposed Settlement and tells them that if they do not opt out, the judgment will be
16 binding upon them. *Id.* The Email Notice and Website Notice further inform the Settlement Class
17 that Class Counsel will seek attorney’s fees, costs, and expenses, and service awards for the current
18 Class Representatives of up to \$1,500 each from the Settlement Fund. Courts have approved class
19 notices even when they only generally describe a settlement. *See, e.g., Mendoza v. United States,*
20 *623 F.2d 1338, 1351 (9th Cir. 1980)* (“very general description of the proposed settlement” satisfies
21 standards). This Email Notice and Website Notice exceed that standard.

22 **F. The Proposed Plan of Distribution is Fair, Reasonable, and Adequate**

23 A plan of distribution of class settlement funds is subject to the “fair, reasonable and
24 adequate” standard that applies to approval of class settlements. *In re Citric Acid Antitrust Litig.*,
25 *145 F. Supp. 2d 1152, 1154 (N.D. Cal. 2001)*. “A plan of allocation that reimburses class members
26 based on the type and extent of their injuries is generally reasonable.” *In re Oracle Sec. Litig.*, No.
27 *90-0931, 1994 U.S. Dist. LEXIS 21593, at *3 (N.D. Cal. June 16, 1994)*. Here, as explained above,
28 the parties propose that the funds paid to Settlement Class Members from the Settlement Fund be

1 distributed through a claims process and allocated pursuant to a *pro rata* distribution based on the
 2 number of Class Members who submit a valid claim, with any returned funds (from uncashed
 3 checks or failed ACH transfers), to be distributed in a second distribution to Authorized Claimants.
 4 Only if such distributions are not economically feasible—in the case of the initial distribution, as
 5 determined by the Parties in consultation with the mediator Antonio Piazza, and in the case of the
 6 second distribution, as determined by the Parties—shall funds be allocated pursuant to a *pro rata*
 7 distribution to the *Cy Pres* recipients: the not-for-profit organizations Access Now, Electronic
 8 Privacy Information Center and Network for Teaching Entrepreneurship (Settlement, § 1.12, 3.1.)

9 **G. The Court Should Set a Final Approval Hearing Schedule**

10 The last step of the settlement approval process is the final approval hearing, at which the
 11 Court may hear all evidence and argument necessary to evaluate the proposed Settlement. At that
 12 hearing, proponents of the Settlement may explain and describe its terms and conditions and offer
 13 argument in support of approval and members of the Settlement Class, or their counsel, may be
 14 heard in support of or in opposition to the Settlement. Plaintiffs propose the following schedule for
 15 final approval of the Settlement:

<u>Event</u>	<u>Date</u>
Notice of Class Action Settlement to Be Emailed and Posted on Internet (Notice Date)	Within 30 days after entry of the Preliminary Approval Order
Class Counsel Motion for Attorneys' Fees and Costs, and Motion for Named Plaintiffs' Service Awards	To be completed 14 days before the Objection/Exclusion Deadline
Objection/Exclusion Deadline	60 days from Notice Date
Motion for Final Approval	
Replies in Support of Motions for Final Approval, Attorneys' Fees and Costs, and Named Plaintiffs' Service Awards to Be Filed by Class Counsel	To be filed 7 days prior to Final Approval Hearing
Final Approval Hearing	No earlier than one hundred ten (110) days after the Notice Date or such other time as the Court shall set.

1 **V. CONCLUSION**

2 Based on the foregoing, Plaintiffs respectfully request that the Court: (1) preliminarily
3 approve the Settlement; (2) appoint Lief Cabraser Heimann & Bernstein, LLP, Russ August &
4 Kabat, and Olavi Dunne, LLP as Class Counsel; (3) appoint Plaintiffs Paul Perkins, Pennie
5 Sempell, Ann Brandwein, Erin Eggers, Clare Connaughton, Jake Kushner, Natalie Richstone,
6 Nicole Crosby, and Leslie Wall as Class Representatives; (4) appoint Gilardi & Co. as the
7 Settlement Administrator; (5) approve the proposed Notice Plan; (6) approve the proposed Claim
8 Form and set a schedule for disseminating notice to Settlement Class members, as well as deadlines
9 to comment on, object to, or seek exclusion from the Settlement; (7) stay all non-Settlement related
10 proceedings in the Action; and (8) schedule a hearing pursuant to Rule 23(e) of the Federal Rules of
11 Civil Procedure to determine whether the proposed Settlement is fair, reasonable, and adequate and
12 should be finally approved.

13 Respectfully submitted,

14 Dated: June 11, 2015

LIEFF, CABRASER, HEIMANN & BERNSTEIN, LLP

15 By: /s/ Nicholas R. Diamand
16 Nicholas R. Diamand

17 Michael W. Sobol
18 Nicholas R. Diamand
19 Melissa Gardner
20 275 Battery Street, 29th Floor
21 San Francisco, CA 94111
22 Telephone: (415) 956-1000
23 Facsimile: (415) 956-1008
24 msobol@lchb.com
25 ndiamand@lchb.com
26 mgardner@lchb.com
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: June 11, 2015

RUSS AUGUST & KABAT

By: /s/ Larry C. Russ
Larry C. Russ

Larry C. Russ
12424 Wilshire Boulevard, 12th Floor
Los Angeles, California 90025
Telephone: (310) 826-7424
Facsimile: (310) 826-6991
lruss@raklaw.com

Attorneys for Plaintiffs Paul Perkins, Pennie Sempell, and Clare Connaughton

Dated: June 11, 2015

OLAVI DUNNE LLP

By: /s/ Dorian S. Berger
Dorian S. Berger

Dorian S. Berger
Daniel P. Hipskind
445 S. Figueroa St., Ste. 3170
Los Angeles, California 90071
Telephone: (213) 516-7900
Facsimile: (213) 516-7910
dberger@olavidunne.com
dhipskind@olavidunne.com

Attorneys for Plaintiffs, Ann Brandwein, Erin Eggers, Nicole Crosby, Jake Kushner, and Leslie Wall

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

PAUL PERKINS, PENNIE SEMPELL, ANN BRANDWEIN, ERIN EGGERS, CLARE CONNAUGHTON, JAKE KUSHNER, NATALIE RICHSTONE, NICOLE CROSBY, and LESLIE WALL; individually and on behalf of all others similarly situated,

Plaintiffs,

v.

LINKEDIN CORPORATION,

Defendant.

CASE NO. 13-CV-04303-LHK

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF
PROPOSED SETTLEMENT, DIRECTING
NOTICE TO CLASS, AND SETTING
FINAL APPROVAL HEARING**

Judge: Hon. Lucy H. Koh
Action Filed: September 17, 2013

WHEREAS, a putative class action captioned *Perkins et al. v. LinkedIn*, Case No. 13-CV-04303-LHK is pending before the Court, and

WHEREAS, Paul Perkins, Pennie Sempell, Ann Brandwein, Erin Eggers, Clare Connaughton, Jake Kushner, Natalie Richstone, Nicole Crosby, and Leslie Wall (collectively, the “Plaintiffs” or “Class Representatives”), individually and in their representative capacities on behalf of the Settlement Class, and LinkedIn Corporation (“Defendant” or “LinkedIn”) (Plaintiffs and LinkedIn collectively, the “Parties,” or singularly, “Party”) have entered into a Settlement Agreement, which, together with the exhibits attached thereto, sets forth the terms and conditions for a proposed settlement and dismissal of the Action with prejudice as to Defendant for the claims of the Settlement Class upon the terms and conditions set forth in the Settlement Agreement, and the Court having read and considered the Settlement Agreement and exhibits attached thereto;

1 This matter coming before the Court upon the agreement of the Parties and the motion of
2 Plaintiffs seeking preliminary approval of the Settlement Agreement, good cause being shown,
3 and the Court being fully advised in the premises,

4 IT IS HEREBY ORDERED, DECREED, AND ADJUDGED AS FOLLOWS:

5 1. Terms and phrases in this order shall have the same meaning as ascribed to them in
6 the Settlement Agreement.

7 **Settlement Class Certification for Settlement Purposes Only**

8 2. A class (the “Settlement Class”) is certified for settlement purposes only.

9 a. The Settlement Class is defined to include: “[A]ll current and former
10 LinkedIn members who used Add Connections to import information from external email
11 accounts and to send emails to persons who were non-members in which the member’s name,
12 photograph, likeness and/or identity was displayed between September 17, 2011 and October 31,
13 2014.” Excluded from the Settlement Class are the following: (1) Defendant, its subsidiaries, and
14 affiliates and each of their respective officers, directors and employees, (2) Class Counsel and
15 Defendant’s Counsel, and (3) any judicial officer to whom the Action is assigned.

16 b. The requirements for class certification under Fed. R. Civ. P. 23(a). The
17 Settlement Class consists of approximately 20.8 million persons, there are questions of law or fact
18 common to the Settlement Class, Plaintiffs’ claims are typical of those of the Settlement Class,
19 and Plaintiffs will fairly and adequately protect the interests of the Settlement Class.

20 c. In addition, the questions of law or fact common to the Settlement Class
21 predominate over any individual questions, and the class action mechanism is superior to other
22 available methods for the fair and efficient adjudication of this controversy. Consequently, the
23 Settlement Class satisfies the requirements of Fed. R. Civ. P. 23(b)(3).

24 3. The Court hereby appoints Plaintiffs Paul Perkins, Pennie Sempell, Ann
25 Brandwein, Erin Eggers, Clare Connaughton, Jake Kushner, Natalie Richstone, Nicole Crosby,
26 and Leslie Wall as Class Representatives.

27
28

1 4. The Court hereby appoints Michael W. Sobol, Nicholas R. Diamand, and Melissa
2 Gardner of Lieff, Cabraser, Heimann & Bernstein, LLP; Dorian S. Berger and Daniel P. Hipkind
3 of Olavi Dunne LLP; and Larry C. Russ of Russ, August & Kabat as Class Counsel.

4 **Preliminary Approval**

5 5. Plaintiffs have moved the Court for an order approving the settlement of the Action
6 in accordance with the Settlement Agreement, which, together with the documents incorporated
7 therein, sets forth the terms and conditions for a proposed settlement and dismissal of the Action
8 with prejudice against Defendant, and the Court having read and considered the Settlement
9 Agreement and having heard the Parties and being fully advised in the premises, hereby
10 preliminarily approves the Settlement Agreement in its entirety subject to the Final Approval
11 Hearing referred to in Paragraph 20 of this order.

12 6. This Court finds that it has jurisdiction over the subject matter of this action and
13 over all Parties to the Action, including all members of the Settlement Class.

14 7. The Court finds that, subject to the Final Approval Hearing, the Settlement
15 Agreement falls within the range of possible approval as fair, reasonable, adequate, and in the best
16 interests of the Settlement Class. The Court further finds that the Settlement Agreement
17 substantially fulfills the purposes and objectives of the class action, and provides beneficial relief
18 to the Settlement Class. The Court also finds that the Settlement Agreement (a) is the result of
19 serious, informed, non-collusive arms' length negotiations involving experienced counsel familiar
20 with the legal and factual issues of this case and made with the assistance of Antonio Piazza of
21 Mediated Negotiations; (b) is sufficient to warrant notice of the Settlement Agreement and the
22 Final Approval Hearing to the Settlement Class; (c) meets all applicable requirements of law,
23 including Federal Rule of Civil Procedure 23, and the Class Action Fairness Act ("CAFA"), 28
24 U.S.C. § 1715; and (d) is not a finding or admission of liability by Defendant.

25 **Notice and Administration**

26 8. Gilardi & Co. LLC ("Gilardi") is hereby appointed as Settlement Administrator and
27 shall perform all the duties of the Settlement Administrator as set forth in the Settlement
28 Agreement and this order.

1 9. The Court finds that the Notice and Notice Plan as set forth in the Settlement
2 Agreement are reasonably calculated to, under all circumstances, apprise the members of the
3 Settlement Class of the pendency of this action, certification of the Settlement Class for settlement
4 purposes only, the terms of the Settlement Agreement, and their right to object to the Settlement or
5 to exclude themselves from the Settlement Class. The Notice and Notice Plan are consistent with
6 the requirements of Rule 23 and due process, and constitute the best notice practicable under the
7 circumstances.

8 10. The Court thus hereby approves the Notice and the Notice Plan, including the
9 Email Notice and Website Notice attached as Exhibits B and C, respectively, to the Settlement
10 Agreement. The Court also approves the Claim Form, attached as Exhibit A to the Settlement
11 Agreement, and claims administration procedures set forth in the Settlement Agreement. The
12 Parties may, by agreement, revise the Notice and/or Claim Form in ways that are not material, or
13 in ways that are appropriate to update those documents for purposes of accuracy or formatting.

14 11. Pursuant to Section 5 of the Settlement Agreement, the Notice Plan shall be
15 implemented as follows: Within thirty (30) days following the entry of this order (the “Notice
16 Date”), LinkedIn shall send or cause to be sent the Email Notice, substantially in the form attached
17 as Exhibit B to the Settlement Agreement, to each Person in the Settlement Class using the email
18 address that LinkedIn has on file for their LinkedIn account. The Email Notice shall include a
19 hypertext link to the Settlement Website. For emails that result in a bounce-back or are otherwise
20 undeliverable, an attempt will be made to re-send the Email Notice once prior to the Notice Date.
21 With the involvement and approval of the Parties, and starting no later than the start of the
22 dissemination of Email Notice to the Settlement Class, the Settlement Administrator shall publish
23 the Website Notice, substantially in the form attached as Exhibit C to the Settlement Agreement,
24 through the Settlement Website. The Settlement Website shall be developed, hosted, and
25 maintained by the Settlement Administrator through the Final Settlement Date and shall include
26 the ability to submit Claim Forms electronically. The Court finds that Defendant has complied
27 with the requirements of 28 U.S.C. § 1715 and served notice of the proposed Settlement
28

1 Agreement upon the appropriate government officials within (10) days after the Settlement
2 Agreement was filed with the Court.

3 12. Settlement Class Members who wish to receive a payment under the Settlement
4 Agreement must complete and submit a timely and valid Claim Form. A Settlement Class
5 Member may file only one (1) Claim Form, regardless of how many LinkedIn Accounts he, she or
6 it may have. All Claim Forms must be postmarked or received by the Settlement Administrator on
7 or before the Claims Deadline, which is hereby set as _____.

8 **Exclusion**

9 13. Settlement Class members who wish to exclude themselves from the Settlement
10 Class for purposes of this settlement may do so by submitting a request for exclusion to the
11 Settlement Administrator on or before the Objection/Exclusion Deadline, which is hereby set as
12 _____. The request for exclusion must comply with the exclusion
13 procedures set forth in the Settlement Agreement and include the case number of the Action, the
14 member's name, address, email address associated with his, her, or its LinkedIn account, phone
15 number, signature, and a statement that he or she wishes to be excluded from the Settlement Class
16 for purposes of this settlement. A request for exclusion may not request exclusion of more than
17 one Settlement Class Member.

18 14. Any member of the Settlement Class who timely requests exclusion consistent with
19 these procedures shall not (i) be bound by the Final Order and Judgment; (ii) be entitled to relief
20 under the Settlement Agreement; (iii) gain any rights by virtue of the Settlement Agreement; or
21 (iv) be entitled to object to any aspect of the Settlement Agreement. However, Settlement Class
22 Members who fail to submit a valid and timely request for exclusion shall be bound by all terms of
23 the Settlement Agreement and the Final Order and Judgment, regardless of whether they have
24 otherwise requested exclusion from the Settlement Class.

25 **Objections**

26 15. Any member of the Settlement Class who has not filed a timely and valid request
27 for exclusion may object to the granting of final approval to the Settlement Agreement. Settlement
28

1 Class Members may object on their own, or may do so through separate counsel at their own
2 expense.

3 16. Any objection must be in writing, must be personally signed by the objector, and
4 must include: (1) the objector's name, address, email address associated with his, her, or its
5 LinkedIn account, and contact phone number; (2) an explanation of the basis upon which the
6 objector claims to be a member of the Settlement Class; (3) all grounds for the objection,
7 including all citations to legal authority and evidence supporting the objection; (4) the name and
8 contact information of any and all attorneys representing, advising, or in any way assisting the
9 objector in connection with the preparation or submission of the objection or who may profit from
10 the pursuit of the objection; and (5) a statement indicating whether the objector intends to appear
11 at the Final Approval Hearing (either personally or through counsel who files an appearance with
12 the Court in accordance with the Local Rules).

13 17. All objections and any papers submitted in support of such objections must be
14 submitted to the Court on or before the Objection/Exclusion Deadline either by mailing them to
15 the Class Action Clerk, or by filing them in person at any location of the United States District
16 Court for the Northern District of California, except that any objection made by a Settlement Class
17 Member represented by counsel must be filed through the Court's Case Management/Electronic
18 Case Filing (CM/ECF) system.

19 18. Any Settlement Class Member who fails to timely mail or file a written objection
20 with the Court and notice of his or her intent to appear at the Final Approval Hearing in
21 accordance with the terms of this Settlement Agreement and as detailed in the Notice shall not be
22 permitted to object to the Settlement at the Final Approval Hearing, and shall be foreclosed from
23 seeking any review of the Settlement by appeal or other means and shall be deemed to have
24 waived his, her or its objections and be forever barred from making any such objections in the
25 Action or any other action or proceeding.

26 **Final Approval Hearing**

27 19. A Final Approval Hearing shall be held before this Court on _____, 2015 at _____
28 A.M./P.M. in Courtroom 8 of the United States District Court for the Northern District of

1 California, located at 280 South 1st Street, San Jose, CA 95113 to consider: (a) whether the
2 proposed settlement of the Action on the terms and conditions provided for in the Settlement
3 Agreement is fair, reasonable and adequate and should be given final approval by the Court; (b)
4 whether a final judgment should be entered; (c) whether to award payment of attorneys' fees and
5 expenses to Class Counsel and in what amount; and (d) whether to award payment of an incentive
6 award to the Class Representative and in what amount. The Court may adjourn the Final Approval
7 Hearing without further notice to Class Members.

8 20. At least fourteen (14) days prior to the Objection/Exclusion Deadline, papers
9 supporting the Fee Award shall be filed with the Court and posted to the Settlement Website.

10 **Further Matters**

11 21. In order to protect its jurisdiction to consider the fairness of the Settlement
12 Agreement and to enter a Final Order and Judgment having binding effect on all Settlement Class
13 Members, the Court hereby enjoins all members of the Settlement Class, and anyone who acts or
14 purports to act on their behalf, from pursuing any of the Released Claims.

15 22. Settlement Class Members shall be bound by all determinations and judgments in
16 the Action concerning the Action and/or Settlement Agreement, whether favorable or unfavorable.

17 23. All discovery and pretrial proceedings and deadlines are stayed and suspended until
18 further notice from the Court, except for such actions as are necessary to implement the Settlement
19 Agreement and this Order.

20 24. In the event that the Settlement Agreement is terminated pursuant to the provisions
21 of the Settlement Agreement, then (a) the Settlement Agreement, this Preliminary Approval Order,
22 and the Final Order and Judgment (if applicable) (including but not limited to the certification of
23 the Settlement Class, the appointment of Plaintiffs as Class Representatives, and the appointment
24 of Class Counsel) shall be vacated and shall be null and void, shall have no further force and effect
25 with respect to any Party in this Action, and shall not be used in this Action or in any other
26 proceeding for any purpose; (b) this action will revert to the status that existed before the
27 Settlement Agreement's execution date; (c)(i) no term or draft of the Settlement Agreement, (ii)
28 nor any part of the Parties' settlement discussions, negotiations, or documentation (including any

1 declaration or brief filed in support of the motion for preliminary approval or motion for final
2 approval), (iii) nor any rulings regarding class certification for settlement purposes (including the
3 Preliminary Approval Order and, if applicable, the Final Order and Judgment), will have any
4 effect or be admissible into evidence for any purpose in the Action or any other proceeding.

5 25. The Court may, for good cause, extend any of the deadlines set forth in this Order
6 without further notice to the Settlement Class Members. The Final Approval Hearing may, from
7 time to time and without further notice to the Settlement Class Members, be continued by order of
8 the Court.

9 **IT IS SO ORDERED.**

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Date: _____

HON. LUCY H. KOH
UNITED STATES DISTRICT JUDGE