

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF CALIFORNIA  
3 SAN JOSE DIVISION  
4

5 SEAN LANE, MOHAMMAED SHEIKHA,  
6 SEAN MARTIN, ALI SAMMOUR,  
7 MOHAMMAED ZIDAN, SARA KARROW,  
8 COLBY HENSON, DENTON HUNKER,  
9 FIRAS SHEIKHA, HASSEN SHEIKHA,  
10 LINDA STEWART, TINA TRAN,  
11 MATTHEW SMITH, ERICA PARNELL,  
12 JOHN CONWAY, AUSTIN MUHS,  
13 PHILLIP HUERTA, ALICIA HUNKER,  
14 individuals, on behalf of themselves and all  
15 others similarly situated, and M.H., a minor,  
16 by and through her parent REBECCA  
17 HOLEY,

18 Plaintiffs,

19 v.

20 FACEBOOK, INC., a Delaware Corporation,  
21 BLOCKBUSTER, INC., a Delaware  
22 Corporation, FANDANGO, INC., a Delaware  
23 Corporation, HOTWIRE, INC., a Delaware  
24 Corporation, STA TRAVEL, INC., a  
25 Delaware Corporation, OVERSTOCK.COM,  
26 INC., a Delaware Corporation,  
27 ZAPPOS.COM, INC., a Delaware  
28 Corporation, GAMEFLY, INC., a Delaware  
Corporation, and DOES 1-40, corporations,

Defendants.

Case No. 5:08-cv-03845-RS

Complaint Filed: August 12, 2008  
Trial Date: Not Yet Set

**SETTLEMENT AGREEMENT**

1           Whereas, the parties hereby enter into this Stipulation and Agreement of Settlement as  
2 follows:

3           Representative Plaintiffs, on behalf of themselves and all Class Members, on the one  
4 hand, and defendant Facebook, Inc. ("Facebook"), on the other hand (each, a "Party";  
5 collectively, the "Parties") hereby enter into this Stipulation and Agreement of Settlement  
6 ("Settlement Agreement"), subject to the approval of the Court pursuant to Rule 23 of the Federal  
7 Rules of Civil Procedure.

8           **I. CERTAIN DEFINITIONS**

9           As used in this Settlement Agreement, certain capitalized persons and terms are defined as  
10 follows:

11           1.1. Beacon: the program launched by Facebook on November 6, 2007 and all  
12 iterations thereof bearing the "Beacon" name. Facebook's initial press release announcing  
13 Beacon is linked here: <http://www.facebook.com/press/releases.php?p=9166>

14           1.2. Beacon Merchant: any company, corporation, business enterprise, or other person  
15 that entered into an agreement with Facebook with respect to Beacon or otherwise launched the  
16 Beacon program (specifically including, without limitation and by way of example, all non-  
17 Facebook defendants named in the Complaint, namely, Blockbuster, Inc., Fandango, Inc.,  
18 Hotwire, Inc., STA Travel, Inc., Hotwire, Inc., Zappos.com, Inc., Overstock.com, Inc., and  
19 Gamefly, Inc.)

20           1.3. Class: all Facebook members who, during the period of November 6, 2007 to the  
21 Preliminary Approval Date, engaged in one or more Triggering Activities on a Beacon Merchant  
22 website.

23           1.4. Class Counsel: the Representative Plaintiffs' counsel of record in the Litigation,  
24 namely, Scott A. Kamber and David A. Stampley of KamberEdelson, LLC and Joseph H. Malley  
25 of the Law Office of Joseph H. Malley, P.C.

26           1.5. Class Member: a Person who falls within the definition of the Class set forth in  
27 subsection 1.3 herein.

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1           1.6. Class Period: the period from November 6, 2007 through the Preliminary  
2 Approval Date.

3           1.7. Complaint: the Class Action Complaint on file in the Litigation as of the Effective  
4 Date of this Settlement Agreement.

5           1.8. Court: the United States District Court for the Northern District of California.

6           1.9. Defense Counsel: Facebook's counsel of record in the Litigation, namely, Michael  
7 G. Rhodes of Cooley Godward Kronish LLP.

8           1.10. Facebook: defendant Facebook, Inc. and its successors, representatives, and  
9 assignees.

10          1.11. Effective Date: the first date as of which all of the events and conditions specified  
11 in section 8 of this Settlement Agreement have occurred.

12          1.12. Fee Application: an application by Class Counsel to the Court for an award of  
13 attorneys' fees, incentive awards to Representative Plaintiffs, and reimbursement of actual  
14 expenses and costs incurred in connection with the Litigation, as well as any interest thereon.

15          1.13. Fee Award: an order by the Court granting Class Counsel's Fee Application in  
16 whole or in part.

17          1.14. Final: (a) if no appeal from the Judgment is filed, the date of expiration of the  
18 time for the filing or noticing of any appeal from the Judgment; or (b) if an appeal from the  
19 Judgment is filed, and the Judgment is affirmed or the appeal dismissed, and no petition for a writ  
20 of certiorari ("Writ Petition") with respect to the appellate court's judgment affirming the  
21 Judgment or dismissing the appeal ("Appellate Judgment") is filed, the date of expiration of the  
22 time for the filing of a Writ Petition; or (c) if a Writ Petition is filed and denied, the date the Writ  
23 Petition is denied; or (d) if a Writ Petition is filed and granted, the date of final affirmance of the  
24 Appellate Judgment or final dismissal of the review proceeding initiated by the Writ Petition.  
25 Any proceeding, order, appeal, or Writ Petition pertaining solely to the Fee Award will not in any  
26 way delay or preclude the Final Approval Order and Judgment.

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1           1.15. Judgment or Final Approval Order and Judgment: the Judgment and Order of  
2 Dismissal With Prejudice to be entered by the Court, substantially in the form attached hereto as  
3 Exhibit 1.

4           1.16. Litigation: the putative class action pending in the United States District Court for  
5 the Northern District of California and captioned *Lane at al. v Facebook, Inc. et al.*, Case No.  
6 1:08-CV-03845 (RS).

7           1.17. Mediator: Anthony Piazza, Esq., of Gregorio, Haldeman, Piazza, Rotman, Frank  
8 & Feder, 201 Mission Street, Suite 1900, San Francisco, CA, 94105.

9           1.18. Net Settlement Fund: the Settlement Fund less all Administrative Costs (as  
10 defined, for example and without limitation, in subsections 4.2, 4.3, 4.5, 4.6, and 4.10, below),  
11 the Fee Award, and any taxes or tax expenses.

12           1.19. Notice: the Notice of Pendency of Class Action and Proposed Settlement,  
13 substantially in the form attached hereto as Exhibits 2 and 3, to be distributed in accordance with  
14 the terms of section 4(A), below, which will notify the Class Members of the pendency of the  
15 Litigation, the material terms of the proposed Settlement, and their options with respect thereto.

16           1.20. Person: an individual, corporation, partnership, limited partnership, association,  
17 joint stock company, estate, legal representative, trust, unincorporated association, government or  
18 any political subdivision or agency thereof, or any other business or legal entity, and such  
19 individual's or entity's spouse, heirs, predecessors, successors, representatives, and assignees.

20           1.21. Preliminary Approval Date: the date entered by the Court on the Preliminary  
21 Approval and Notice Order.

22           1.22. Preliminary Approval and Notice Order: a Court order, substantially in the form  
23 attached hereto as Exhibit 4, providing for, among other things, preliminary approval of the  
24 Settlement and dissemination of the Notice to the Class.

25           1.23. Privacy Foundation: a non-profit foundation that shall be formed and created by  
26 Facebook and funded from the Net Settlement Fund.

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1           1.24. Protected Persons: Facebook and the Beacon Merchants, collectively, and each of  
2 their respective past and present officers, directors, employees, insurers, agents, representatives,  
3 partners, joint-venturers, parents, subsidiaries, affiliates, attorneys, successors and assigns.

4           1.25. Released Claims: any and all claims for payment, non-economic, or injunctive  
5 relief of any kind or nature and any and all liabilities, demands, obligations, losses, actions,  
6 causes of action, damages, costs, expenses, attorneys' fees and any and all other claims of any  
7 nature whatsoever, arising from or relating to any of the allegations or statements made in, or in  
8 connection with, the Litigation (and including, without limitation, any and all claims based upon  
9 any of the laws, regulations, statutes, or rules cited, evidenced and referenced by all such  
10 allegations and statements), or any other known or unknown claims arising from or relating to  
11 Beacon (including, without limitation, arising from or relating to the use of data gathered through  
12 Beacon).

13           1.26. Representative Plaintiffs: subject to Court approval, Sean Lane, Mohannaed  
14 Sheikha, Sean Martin, Ali Sammour, Mohammaed Zidan, Sara Karrow, Colby Henson, Denton  
15 Hunker, Firas Sheikha, Hassen Sheikha, Linda Stewart, Tina Tran, Matthew Smith, Erica Parnell,  
16 John Conway, Austin Muhs, Phillip Huerta, Alicia Hunker, and M.H., a minor, by and through  
17 her parent Rebecca Holey, as well as any others appointed by the Court in the Preliminary  
18 Approval and Notice Order to serve as Representative Plaintiffs.

19           1.27. Settlement: the terms of settlement set forth in this Settlement Agreement.

20           1.28. Settlement Fund: the total sum of nine million five hundred thousand dollars  
21 (\$9,500,000), which shall be paid in accordance with the Settlement Agreement.

22           1.29. Settling Parties: collectively, Facebook, the Representative Plaintiffs, and all  
23 Class Members.

24           1.30. Triggering Activity: certain activity, that when completed on a Beacon Merchant  
25 website, triggered Beacon.

26           1.31. The plural of any term defined herein includes the singular, and vice versa.  
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1 **II. INTRODUCTION**

2 **A. Background of the Settlement**

3 2.1. On August 12, 2008, the Representative Plaintiffs commenced the Litigation  
4 alleging claims against Facebook (and other defendants) arising out of Beacon. The Complaint  
5 alleged violations of (i) the Electronic Communications Privacy Act, 18 U.S.C. §2510; (ii)  
6 Computer Fraud and Abuse Act, 18 U.S.C. 1030; (iii) Video Privacy Protection Act, 18 U.S.C. §  
7 2710; (iv) California's Consumer Legal Remedies Act, California Civil Code § 1750; and (v)  
8 California's Computer Crime Law, Penal Code § 502.

9 2.2. On October 10, 2008, Facebook filed a motion to dismiss the Complaint. The  
10 hearing for that motion has been taken off the Court's calendar. (*See* Dkt. No. 23.)

11 2.3. Commencing in September 2008, the Parties have conducted an extensive series of  
12 settlement negotiations including, among other things, an in person mediation conducted by the  
13 Mediator on December 9, 2008, during which the Parties have candidly aired the strengths and  
14 weaknesses in their respective litigation positions.

15 2.4. At the December 9, 2008 mediation, the Parties tentatively reached an agreement  
16 in principle for the resolution of all claims alleged in the Litigation, subject to additional  
17 negotiations, confirmatory discovery and communications and, further and without limitation, the  
18 Parties' entering into a formal memorandum of understanding and thereafter reaching agreement  
19 on final settlement documentation, including this Settlement Agreement.

20 2.5. At the above referenced mediation, the Parties executed a Memorandum of  
21 Understanding (the "MOU"), which sets forth the Parties' tentative framework for the proposed  
22 Settlement memorialized in this Settlement Agreement.

23 2.6. After extensive subsequent negotiations, counsel for the parties (namely, Michael  
24 G. Rhodes of Cooley Godward Kronish LLP, for Facebook, and Scott A. Kamber of  
25 KamberEdelson, LLC) conducted a second mediation before the Mediator on July 28, at which  
26 the remaining open issues in dispute were resolved, which led to the parties' drafting and  
27 execution of this Settlement Agreement.

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1           **B. Facebook's Denial of Wrongdoing and Liability**

2           2.7. Facebook denies any and all wrongdoing whatsoever. Nothing in this Settlement  
3 Agreement shall be construed or deemed to be evidence of or an admission, presumption, or  
4 concession on the part of Facebook of any fault, liability, coverage or wrongdoing as to any facts  
5 or claims asserted in the Litigation (or any infirmity in the defenses that Facebook has asserted or  
6 could assert in the Litigation), or any other actions or proceedings, and shall not be interpreted,  
7 construed, deemed, invoked, offered, or adduced or received in evidence or otherwise used  
8 against Facebook in the Litigation, or in any other action or proceeding, whether civil, criminal,  
9 or administrative.

10           **C. The Settlement Is Fair, Adequate, and Reasonable**

11           2.8. Class Counsel have conducted extensive research and investigation relating to the  
12 claims and the underlying events and transactions alleged in the Complaint during the prosecution  
13 of the Litigation which included: (a) the interview of the Representative Plaintiffs to assess the  
14 potential claims of each individual; (b) the review of public statements, including consumer-  
15 facing statements on Facebook's website, press releases attributed to Facebook, and articles about  
16 Facebook; (c) research of the applicable law with respect to the claims asserted in the Complaint  
17 and arguments asserted in Facebook's motion to dismiss; and (d) the review of documents and  
18 other information made available by Facebook to Class Counsel for their review. Although  
19 Class Counsel believe that the claims asserted against Facebook in the Litigation have substantial  
20 merit, Class Counsel recognize and acknowledge that continued prosecution of the Litigation  
21 through trial and possible appeal would be protracted and expensive.

22           2.9. Class Counsel have also taken into account the uncertain outcome and the risk of  
23 any litigation, especially in complex actions such as the Litigation, as well as the difficulties and  
24 delays inherent in such litigation. Class Counsel are mindful of the inherent problems of proof  
25 and possible defenses to the claims asserted in the Litigation.

26           2.10. As noted, Class Counsel have conducted extensive discussions and arm's length  
27 negotiations with Defense Counsel including with the assistance of the Mediator, with respect to a  
28 resolution of the claims in the Litigation and with the goal of achieving the best relief possible

1 consistent with the interests of the Class and the strengths and weaknesses of the claims and  
2 defenses asserted in the Litigation.

3 2.11. Based on evaluation of all of these factors, Class Counsel have concluded in light  
4 of the applicable law that the terms of the Settlement are fair, adequate, and reasonable, and that it  
5 is desirable and in the best interests of the Representative Plaintiffs and all Class Members that  
6 the Litigation be fully and finally settled on the terms set forth in this Settlement Agreement.

7 **NOW THEREFORE**, in consideration of the promises and mutual covenants set forth  
8 herein, it is hereby STIPULATED AND AGREED, by and among the Parties to this Settlement  
9 Agreement, through their respective attorneys, subject to approval of the Court pursuant to Rule  
10 23 of the Federal Rules of Civil Procedure and satisfaction of all the terms and conditions set  
11 forth herein, that the Litigation and all Released Claims shall be compromised, settled, released,  
12 and dismissed with prejudice, upon and subject to the following terms.

13 **III. CLASS CERTIFICATION**

14 3.1 The Parties stipulate to the certification of the Class, for settlement purposes only,  
15 pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure.

16 3.2 The class certification contemplated by this Settlement Agreement is for purposes  
17 of settlement only, and nothing in this Settlement Agreement shall constitute, in this or in any  
18 other action or proceeding, an admission by Facebook or a finding or evidence that any claims  
19 that either were brought or could have been brought in the Litigation are appropriate for class  
20 treatment or that any requirement for class certification is or could otherwise be satisfied. By  
21 entering into this Settlement Agreement, Facebook in no way waives its right to challenge or  
22 contest the continued maintenance of the Litigation or any other lawsuit or class action and to  
23 oppose certification of any class or otherwise oppose the claims of the class for litigation  
24 purposes. Nor may the fact that Facebook entered into this Settlement Agreement be offered,  
25 received, or construed as an admission, finding, or evidence, for any purpose, including the  
26 appropriateness of class certification.

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1 **IV. SETTLEMENT CONSIDERATION**

2 **A. Dissemination of the Notice**

3 As soon as reasonably practicable after the Court certifies the proposed Class,  
4 preliminarily approves the proposed Settlement, and approves the forms of Notice, Facebook  
5 shall:

6 4.1. Distribute the Court approved Notice or links to such Notice via an internal  
7 Facebook message targeting users whose PII was likely to have been transmitted to Facebook via  
8 Beacon, as determined by Facebook based on reasonable efforts. The internal Facebook message  
9 shall contain a link to a blog post, in a form substantially similar to that attached hereto as Exhibit  
10 2.

11 4.2. During the Notice period, Facebook shall also cause the Court-approved summary  
12 form of publication notice, in a form substantially similar to that attached hereto as Exhibit 3 (the  
13 “Publication Notice”), to be published in one daily issue of the national edition of *USA Today*.  
14 The cost of the Publication Notice shall constitute an Administrative Cost and be paid from the  
15 Settlement Fund.

16 4.3. To the extent that additional notices to the Class are ordered by the Court or  
17 become necessary for the Court’s approval of the Settlement Agreement, such additional notices  
18 may be made in the same manner as the original Notice, but the out-of-pocket costs, if any, of any  
19 additional notices, will constitute Administrative Costs and will be reimbursed to Facebook from  
20 the Settlement Fund.

21 4.4. Within ten (10) days of the filing of the Settlement Agreement with the Court,  
22 Facebook shall properly notify the appropriate state and federal officials of this Settlement  
23 Agreement pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1715.

24 **B. Settlement Fund**

25 4.5. The Settlement Fund shall consist of a total of \$9.5 million (\$9,500,000.00). The  
26 Settlement Fund shall be kept under the control and possession of Facebook but within twenty  
27 (20) days of Preliminary Approval, the Settlement Fund shall be deposited into a separate bank  
28 account specifically established by Facebook for purpose of this Settlement.

1           4.6.    Upon the formation of the Privacy Foundation in accordance with Section 4.19,  
2 Facebook shall distribute to the Privacy Foundation the Settlement Fund of \$9.5 million less the  
3 Fee Award, costs, incentive awards, and Administrative Costs of this Settlement as provided  
4 herein (including, without limitation, the advance to the third party Class administrator specified  
5 in Section 4.10, below). Once transferred, the Privacy Foundation shall have sole and exclusive  
6 control over the management and disposition of those funds.

7           **C.    Administrative Costs**

8           4.7.    Subject to the Court’s approval, the Settlement Fund will be applied to payment of  
9 the reasonable costs incurred administering the Settlement as variously specified herein  
10 (“Administrative Costs”).

11          4.8.    All Administrative Costs that are reasonably and necessarily incurred prior to the  
12 Effective Date shall be advanced from the Settlement Fund, subject to prior approval by Class  
13 Counsel, Defense Counsel, and the Court.

14          4.9.    Under no circumstances will the Representative Plaintiffs, Class Counsel, or any  
15 Class Member have any liability for Administrative Costs under the Settlement. If the Settlement  
16 is terminated or fails to become Final for any reason, Facebook will absorb such costs in their  
17 entirety.

18          4.10.   Within twenty (20) days of the Preliminary Approval Date, Facebook shall pay to  
19 a third party class action administrator to be designated by Class Counsel the sum of \$250,000 to  
20 be used to cover the administrative and other incidental costs associated with responding to  
21 inquiries from Class Members about this Settlement and the process by which this Settlement will  
22 be subject to judicial approval. Such amount shall be deducted from the Settlement Payment as a  
23 credit therefrom and constitute an Administrative Cost. If the Court refuses to approve this  
24 Settlement for any reason, then the class action administrator shall promptly account to Facebook  
25 for the amount of actual expenses incurred in connection with the administration of this  
26 Settlement and return to Facebook the unused balance.

1           4.11. Any disputes over the propriety of any Administrative Costs or the reimbursement  
2 thereof from the Settlement Fund shall be finally resolved by the Mediator in the manner directed  
3 thereby.

4           **D. Attorneys' Fees, Expenses, & Incentive Awards**

5           4.12. Class Counsel have never received any payment for prosecuting this case on  
6 behalf of Representative Plaintiffs and Members of the Class, nor have they been reimbursed for  
7 their out-of-pocket expenses. On or before the date specified in the Preliminary Approval and  
8 Notice Order, Class Counsel will submit their Fee Application requesting approval of a Fee  
9 Award consisting of an award of attorneys' fees in an amount of up to one-third of the Settlement  
10 Fund as defined in Section 1.28. Facebook agrees that a request by Class Counsel for such a Fee  
11 Award is fair and reasonable and it will not object to or otherwise challenge Class Counsels' Fee  
12 Application from the Settlement Fund if limited to such an amount. Class Counsel have, in turn,  
13 agreed not to seek more than said amount from the Court.

14           4.13. The amount of any Fee Award, costs and expenses shall be paid from the  
15 Settlement Fund. In the event the Settlement is not finally approved, Facebook is under no  
16 obligation to pay attorneys' fees, incentive awards, costs or expenses, or interest thereon.

17           4.14. Notwithstanding any appeal, objection, or challenge to the Court's entry of the  
18 Judgment or Final Approval Order and Judgment, no later than ten (10) business days after the  
19 entry of such order Defense Counsel or Facebook shall pay to Class Counsel the Fee Award from  
20 the Settlement Fund provided Class Counsel provides adequate security for the recovery of  
21 amounts paid in the event of reversal on appeal of the final approval of this Settlement.

22           4.15. The Fee Application and the Court's decision to grant or deny it, in whole or in  
23 part, are to be considered by the Court separately from the Court's consideration of the fairness,  
24 reasonableness, and adequacy of the Settlement. Any order or proceedings relating to the Fee  
25 Application or Fee Award, or any appeal from any order relating thereto or reversal or  
26 modification thereof, will not operate to terminate or cancel this Settlement Agreement, or affect  
27 or delay the finality of the Judgment approving the Settlement and this Settlement Agreement.

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1 No order of the Court or modification or reversal on appeal of any order of the Court concerning  
2 any Fee Award shall constitute grounds for cancellation or termination of this Agreement.

3 4.16. In addition to any benefits afforded under the Settlement, and in recognition of  
4 their efforts on behalf of the Class, subject to Court approval, Sean Lane shall receive fifteen  
5 thousand dollars (\$15,000); Sean Martin and Mohammad Sheikha shall each receive seven  
6 thousand five hundred dollars (\$7,500) and the other Representative Plaintiffs shall each receive  
7 one thousand dollars as appropriate compensation for their time and effort serving as the  
8 Representative Plaintiffs in the Litigation. Facebook or Defense Counsel shall pay such amount  
9 from the Settlement Fund to the Representative Plaintiffs, in care of Class Counsel, within thirty  
10 (30) days of the Effective Date.

11 4.17. Except as otherwise provided in this section, each Party will bear his/her/its own  
12 costs of suit, including attorneys' fees, incurred in bringing or defending against the Litigation.

13 **E. Tax Liability For Settlement Fund**

14 4.18. Under no circumstances will Facebook or Defense Counsel have any liability for  
15 taxes or tax expenses under the Settlement.

16 **F. Formation of Privacy Foundation**

17 4.19. Within twenty (20) days of the entry of the Judgment or Final Approval Order and  
18 Judgment, utilizing the net proceeds of the Settlement Fund, Facebook shall form and establish  
19 the a non-profit foundation ("Privacy Foundation"), the purpose of which shall be to fund projects  
20 and initiatives that promote the cause of online privacy, safety, and security. The out-of-pocket  
21 expenses (including filing fees, legal fees, and naming costs) shall constitute an Administrative  
22 Cost that shall be deducted from the Settlement up to a maximum cap of \$50,000, inclusive.

23 4.20. The charter and bylaws of the Privacy Foundation shall be to fund and sponsor  
24 programs designed to educate users, regulators, and enterprises regarding critical issues relating  
25 to protection of identity and personal information online through user control, and to protect users  
26 from online threats. The Privacy Foundation shall be prohibited from directly or indirectly  
27 sponsoring litigation except to defend its resources. Consistent with the terms of this section,  
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1 Facebook shall submit the form of initial charter and bylaws to the Court in connection with the  
2 parties seeking final approval of this Settlement.

3 4.21. The Privacy Foundation shall have three directors. The initial directors shall be  
4 chosen by mutual agreement of the parties, through their respective counsel. In the event that the  
5 three directors cannot be selected through mutual agreement, each Party shall nominate one  
6 director to serve on the Board of the Privacy Foundation and then each side shall further nominate  
7 a proposed third director and the Mediator shall make the final and binding selection as to the  
8 identity of the third director. During its first year, the Privacy Foundation shall unanimously  
9 determine a plan for terms and succession of its officers and directors and a permanent name for  
10 the Foundation. After the initial directors have served their initial terms, all future directors shall  
11 be nominated and selected in accordance with the charter and by-laws of the foundation. The  
12 Privacy Foundation's governance and operations shall be determined by majority vote of the  
13 Board.

14 4.22. The Privacy Foundation also shall have a two member "Board of Legal Advisors"  
15 who shall offer nonbinding advice on compliance with the provisions of this Agreement, attend  
16 all formal meetings and offer nonbinding advice to the officers and directors. Michael Rhodes  
17 and Scott A. Kamber, or their designees, shall serve as the initial board of legal advisors. During  
18 its first year, the board of legal advisors, in consultation with the directors and officers, shall  
19 determine a plan for terms and succession of members of the board of legal advisors.

20 **G. Termination of the Beacon Program**

21 4.23. In connection with this Settlement, and within sixty (60) days of the Preliminary  
22 Approval Date, Facebook shall terminate the Beacon program in its entirety. In the event that this  
23 Settlement is not finalized in its entirety, then Facebook reserves the right to restart and/or  
24 reactivate Beacon in whole or part.

25 **V. RELEASES**

26 5.1. Upon the Effective Date, each of the Representative Plaintiffs and each of the  
27 Class Members will be deemed to have, and by operation of the Judgment will have, fully,  
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1 finally, and forever released, relinquished, and discharged the Protected Persons from all  
2 Released Claims.

3 5.2. The Representative Plaintiffs, on behalf of all Class Members, acknowledge and  
4 agree that they have read and understand the contents of Section 1542 of the Civil Code of the  
5 State of California, and, to the fullest extent permitted by law, the Representative Plaintiffs and  
6 all Class Members expressly, knowingly, intentionally, and irrevocably waive any and all rights  
7 and benefits that they may have under Section 1542 or any other similar state or federal statute, or  
8 common law or other legal principle. Section 1542 reads as follows:

9 **Section 1542. (General Release - Claims Extinguished) A GENERAL**  
10 **RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**  
11 **CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR**  
12 **HER FAVOR AT THE TIME OF EXECUTING THE RELEASE,**  
13 **WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY**  
14 **AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

15 5.3. The Representative Plaintiffs and one or more Class Members may hereafter  
16 discover facts different from or in addition to those that they now know or believe to be true with  
17 respect to the releases provided for in this section (Section 5). Nevertheless, the Representative  
18 Plaintiffs and all Class Members hereby expressly waive and release upon the Effective Date any  
19 and all Released Claims, whether known or unknown, suspected or unsuspected, foreseen or  
20 unforeseen, contingent or non-contingent, without regard to the subsequent discovery or existence  
21 of such different or additional facts.

22 5.4. Notwithstanding anything to the contrary in this Settlement Agreement, the  
23 releases contained in Section 5 herein do not extend to any action or proceeding to enforce or  
24 defend any rights or obligations arising under this Agreement.

25 **VI. PRELIMINARY APPROVAL AND NOTICE ORDER; FINAL FAIRNESS HEARING**

26 6.1. Promptly after execution of this Settlement Agreement, Class Counsel will  
27 move the Court for entry of the Preliminary Approval and Notice Order, requesting, *inter alia*,  
28 preliminary approval of the Settlement and for a stay of all proceedings in the Litigation against

1 the Protected Persons until the Court renders a final decision on approval of the Settlement. The  
2 motion shall include (a) the proposed Preliminary Approval and Notice Order in the form  
3 attached as Exhibit 4 hereto, (b) the proposed forms of Notice, substantially in the form of  
4 Exhibits 2 and 3 hereto; and (c) a proposed Final Approval Order and Judgment finally approving  
5 the Settlement in the form attached as Exhibit 1 hereto.

6 6.2. After dissemination of the Notice in accordance with the Preliminary Approval  
7 and Notice Order, Class Counsel will move the Court for Final Approval Order and entry of the  
8 Judgment,

9 (a) certifying the settlement Class, and, fully and finally approving the  
10 Settlement contemplated by this Agreement and its terms as being fair, reasonable and adequate  
11 within the meaning of Rule 23 of the Federal Rules of Civil Procedure and directing its  
12 consummation pursuant to its terms and conditions;

13 (b) finding that the notice given to Class Members as contemplated in  
14 subsections 4.1-4.3 above constitutes the best notice practicable under the circumstances and  
15 complies in all respects with the requirements of Rule 23 of the Federal Rules of Civil Procedure  
16 and due process;

17 (c) directing that the Litigation be dismissed with prejudice as to Protected  
18 Persons and, except as provided for herein, without costs;

19 (d) discharging and releasing the Protected Persons from all Released Claims;

20 (e) permanently barring and enjoining the institution and prosecution, by  
21 Plaintiffs and the Class Members, of any other action against the Protected Persons in any court  
22 asserting any Released Claims;

23 (f) reserving continuing and exclusive jurisdiction over the Settlement,  
24 including all future proceedings concerning the administration, consummation and enforcement  
25 of this Agreement;

26 (g) determining pursuant to Fed. R. Civ. P. 54(b) that there is no just reason for  
27 delay and directing entry of a final judgment as to defendants in the Litigation; and  
28

1 (h) containing such other and further provisions consistent with the terms of  
2 this Settlement Agreement to which the parties expressly consent in writing.

3 6.3. The Parties will request that the Court hold a hearing, at least ninety (90) days  
4 after the appropriate state and federal officials are served with proper notice of this Settlement  
5 Agreement pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, on whether the  
6 Settlement should be granted final approval and whether Class Counsels' Fee Application should  
7 be granted.

8 6.4. Following dissemination of the Notice as provided in the Preliminary Approval  
9 and Notice Order, Class Members will have the right to opt out of the Settlement in accordance  
10 with the procedures set forth in the Notice. Any right to opt out shall be personal to the Class  
11 Member and shall not be assignable.

12 6.5. In the event that 1,500 or more Class Members opt out of the Settlement,  
13 Facebook will be entitled at its sole option to void, nullify, terminate, and/or rescind the  
14 Settlement Agreement and the MOU. Such option must be exercised at least fourteen (14) days  
15 before the final fairness hearing on the approval of the Settlement.

16 **VII. OPT-OUT AND OBJECTIONS**

17 7.1. Any Person may opt out of the Class at any time during the period of time  
18 approved by the Court and as will be outlined in the Court-approved Notice. Opt-outs must be  
19 post-marked by a date approved by the Court and specified in the Notice. In order to exercise the  
20 right to opt out, the Person seeking to opt-out must complete and return a request for exclusion to  
21 the claims administrator during the opt-out period. Except for those Persons who have properly  
22 opted out, all Class Members will be bound by this Settlement and the Judgment to be entered  
23 following final approval of this Settlement Agreement. Any Person who elects to opt out of the  
24 Settlement Class shall not (i) be bound by any orders or Judgment entered in this Litigation; (ii)  
25 be entitled to relief under this Settlement; (iii) gain any rights by virtue of this Settlement; or (iv)  
26 be entitled to object to any aspect of this Settlement. Any request for exclusion must be  
27 personally signed by the Person requesting exclusion. So-called "mass" or "class" opt-outs shall  
28 not be allowed.



1           7.2. Any Class Member who intends to object to this Settlement must include his/her  
2 name and address, include all arguments, citations, and evidence supporting the objection and that  
3 they are a member of the Class, and provide a statement whether the objector intends to appear at  
4 the final fairness hearing, either with or without counsel. Objections must be post-marked by a  
5 date approved by the Court and specified in the Notice. Any Class Member who fails to timely  
6 file a written objection and notice of his or her intent to appear at the fairness hearing pursuant to  
7 this paragraph or as detailed in the Notice, shall not be permitted to object to this Settlement at the  
8 fairness hearing, and shall be foreclosed from seeking any review of this Settlement by appeal or  
9 other means.

10 **VIII. CONDITIONS**

11           8.1. The Effective Date of this Settlement Agreement is conditioned upon the  
12 occurrence of all of the following events:

13                   (a) The Court enters the Preliminary Approval and Notice Order;

14                   (b) Facebook does not exercise its option under Section 6.5 herein to void,  
15 nullify, terminate, and/or rescind the Settlement Agreement and the MOU;

16                   (c) The Court enters the Judgment, providing, among other things, that the  
17 Class is certified for settlement purposes, that there has been adequate and sufficient notice of the  
18 Settlement to the Class, and that the terms and conditions of the Settlement are fair, reasonable,  
19 and adequate as a settlement of the claims of the Class in the Litigation;

20                   (d) The Judgment becomes Final;

21                   (e) The Litigation is dismissed with prejudice as to Facebook and the Protected  
22 Persons; and

23                   (f) The Representative Plaintiffs and all Class Members release Facebook and  
24 all Protected Persons from the Released Claims.

25           8.2. In the event that any one or more of these conditions is not met, this Settlement  
26 Agreement will be of no force or effect, and the Parties will be deemed to be in the same position  
27 as they occupied prior to entering into this Settlement Agreement, without waiver of any rights,  
28 claims or defenses, unless the Parties mutually agree in writing to proceed with this Agreement.

1           8.3. If the Court does not enter the Preliminary Approval and Notice Order,  
2 substantially in the form of Exhibit 4 hereto, the Final Approval Order and Judgment,  
3 substantially in the form of Exhibit 1 hereto, or if the Court enters the Final Approval Order and  
4 Judgment and appellate review is sought and, on such review, the Final Approval Order and  
5 Judgment is finally vacated, modified, or reversed, then this Agreement and the Settlement  
6 incorporated therein shall be cancelled and terminated, unless all parties who are adversely  
7 affected thereby, in their sole discretion within thirty (30) days from the date of receipt of such  
8 ruling to such parties, provide written notice to all other parties hereto of their intent to proceed  
9 with the Settlement under the terms of the Preliminary Approval and Notice Order or the Final  
10 Approval Order and Judgment as modified by the Court or on appeal. Such notice may be  
11 provided on behalf of Plaintiffs and the Class Members by Class Plaintiffs' Counsel. No Party  
12 shall have any obligation whatsoever to proceed under any terms other than substantially in the  
13 form provided and agreed to herein; provided, however, that no order of the Court concerning any  
14 Fee and Expense Application, or any modification or reversal on appeal of such order, shall  
15 constitute grounds for cancellation or termination of this Agreement by any Party. Without  
16 limiting the foregoing, defendant Facebook shall have, in its sole and absolute discretion, the  
17 option to terminate the Settlement in its entirety in the event that the Judgment, upon becoming  
18 Final, does not provide for the dismissal with prejudice of all of the claims against them asserted  
19 in the Litigation.

20           8.4. If this Settlement Agreement is not finally approved for any reason or fails to  
21 become effective or Final in accordance with its terms, the Settlement Fund, less any outstanding  
22 Administrative Costs incurred or due and owing, and any amounts incurred or due and owing in  
23 connection with taxes or tax expenses provided for herein, will revert entirely to Facebook.

24           8.5. If a case is commenced with respect to Facebook under Title 11 of the United  
25 States Code (Bankruptcy) or a trustee, receiver, or conservator is appointed under any similar  
26 laws, and if a final order of a court of competent jurisdiction is entered determining that payments  
27 by Facebook pursuant to the Settlement are a preference, voidable or fraudulent transfer, or  
28

1 similar transaction, then the releases given and Judgment entered in favor of the Protected  
2 Persons pursuant to this Settlement Agreement will be null and void.

3 8.6. If additional notice, other than that specified in this Settlement is ordered by the  
4 Court, or the Court requires that notice be provided to Class Members via standard mail as a  
5 condition for the Court's approval of the Settlement, the costs of such additional notice are  
6 deemed Administrative Costs and will be reimbursed to Facebook from the Settlement Fund.

7 **IX. MISCELLANEOUS PROVISIONS**

8 9.1. The Parties acknowledge that it is their intent to consummate this Settlement  
9 Agreement, and agree to cooperate to the extent reasonably necessary to effectuate and  
10 implement all terms and conditions of this Settlement Agreement and to exercise their best efforts  
11 to accomplish such terms and conditions.

12 9.2. The Parties intend the Settlement to be a final and complete resolution of all  
13 disputes between them with respect to the Litigation and the Released Claims. The Settlement  
14 compromises claims that are contested and will not be deemed an admission by any Settling Party  
15 as to the merits of any claim or defense.

16 9.3. The time to appeal from an approval of the Settlement shall commence upon the  
17 Court's entry of the Judgment regardless of whether an application for attorneys' fees and  
18 expenses has been submitted to the Court or resolved.

19 9.4. Neither this Settlement Agreement, the Settlement, nor any act performed or  
20 document executed pursuant to or in furtherance of the Settlement is or may be deemed to be an  
21 admission of, or evidence of: (i) the validity of any Released Claims; (ii) any wrongdoing or  
22 liability of Facebook; or (iii) any fault or omission of Facebook in any civil, criminal, or other  
23 proceeding in any court, administrative agency, or other tribunal. Neither this Settlement  
24 Agreement nor the Settlement, nor any act performed or document executed pursuant to or in  
25 furtherance of this Settlement Agreement or the Settlement shall be admissible in any proceeding  
26 for any purpose, except to enforce the terms of the Settlement, and except that any of the  
27 Protected Persons may file this Settlement Agreement and/or the Judgment in any action that may  
28 be brought against them in order to support any defense or counterclaim, including without

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1 limitation those based on principles of *res judicata*, collateral estoppel, release, good faith  
2 settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion  
3 or similar defense or counterclaim.

4 9.5. All of the Exhibits to this Settlement Agreement are material and integral parts  
5 hereof and are fully incorporated herein by this reference. Any inconsistency between this  
6 Settlement Agreement and the Exhibits attached hereto shall be resolved in favor of this  
7 Agreement.

8 9.6. The Parties acknowledge and agree that this Settlement Agreement and the  
9 Exhibits attached hereto constitute the entire agreement among the Parties, that they have not  
10 executed this Settlement Agreement in reliance on any promise, representation, inducement,  
11 covenant, or warranty except as expressly set forth herein, and that this Settlement Agreement  
12 supersedes all other prior statements or agreements, whether oral and written, to the extent any  
13 provision hereof is inconsistent with any such prior oral or written statements or agreements.

14 9.7. This Settlement Agreement may not be amended except by a writing executed by  
15 all Parties hereto or their respective successors-in-interest.

16 9.8. The Court will retain jurisdiction with respect to implementation and enforcement  
17 of the terms of this Settlement Agreement and over any disputes arising under this Settlement  
18 Agreement, and all Parties hereby submit to the jurisdiction of the Court for such purposes.

19 9.9. Each Party represents and warrants to all other Parties that such Party: (a) was  
20 represented by attorneys of the Party's choosing in connection with the execution of this  
21 Settlement Agreement; (b) has read and understood all aspects of this Settlement Agreement and  
22 all of its effects; and (c) has executed this Settlement Agreement as a voluntary act of the Party's  
23 own free will and without any threat, force, fraud, duress, or coercion of any kind.

24 9.10. Class Counsel represents and warrants that it is expressly authorized by the  
25 Representative Plaintiffs to take all appropriate action required or permitted to be taken by the  
26 Class pursuant to this Settlement Agreement to effectuate its terms, and is expressly authorized to  
27 enter into any modifications or amendments to this Agreement on behalf of the Class.

28

1           9.11. If any provision of this Settlement Agreement is declared by the Court to be  
2 invalid, void, or unenforceable, the remaining provisions of this Settlement Agreement will  
3 continue in full force and effect, unless the provision declared to be invalid, void, or  
4 unenforceable is material, at which point the Parties shall attempt to renegotiate the Settlement  
5 Agreement or, if that proves unavailing, either Party can terminate the Settlement Agreement  
6 without prejudice to any Party.

7           9.12. This Agreement shall be binding upon, and inure to the benefit of, the successors  
8 and assigns of the parties hereto. Without limiting the generality of the foregoing, each and every  
9 covenant and agreement herein by Plaintiffs and Class Counsel be binding upon all Class  
10 Members.

11           9.13. This Settlement Agreement will be construed as if the Parties jointly prepared it,  
12 and any uncertainty or ambiguity will not be interpreted against any one Party because of the  
13 manner in which this Settlement Agreement was drafted or prepared.

14           9.14. The headings used in this Settlement Agreement are for convenience only and will  
15 not be used to construe its provisions.

16           9.15. This Settlement Agreement may be executed by facsimile and in any number of  
17 counterparts, all of which will be construed together and will constitute one document.

18           9.16. This Agreement shall not be modified in any respect except by a writing executed  
19 by all the parties hereto, and the waiver of any rights conferred hereunder shall be effective only  
20 if made by written instrument of the waiving party. The waiver by any party of any breach of this  
21 Agreement shall not be deemed or construed as a waiver of any other breach, whether prior,  
22 subsequent or contemporaneous, of this Agreement.

23           9.17. To the extent necessary, the Parties agree to submit any disputes relating to the  
24 substance or wording of this Settlement Agreement or the terms or content of the Settlement  
25 Agreement to the Mediator. If the Mediator is unable to resolve the dispute, then the dispute will  
26 be submitted to the Court. The Court shall retain exclusive jurisdiction over the implementation  
27 and enforcement of this Agreement.

28

1           9.18. This Settlement Agreement will be governed by, and construed in accordance  
2 with, the laws of the State of California.

3           9.19. Each Person executing this Settlement Agreement as Class Counsel or Defense  
4 Counsel hereby warrants that such Person has the full authority to make any and all  
5 representations or warranties made in this Settlement Agreement, to agree to all terms and  
6 conditions of this Settlement Agreement, and to execute this Settlement Agreement.

7           9.20. The Parties and their counsel shall keep confidential the terms of this Settlement  
8 Agreement until such time as they mutually agree on the content and timing of a joint press  
9 release announcing the Settlement, or until Plaintiffs file a motion for preliminary approval of the  
10 Settlement pursuant to subsection 6.1 above, whichever is sooner. Notwithstanding the  
11 foregoing, prior to the time that such press release is issued or Plaintiffs file a motion for  
12 preliminary approval of the Settlement pursuant to subsection 6.1 above, whichever is sooner, the  
13 Parties and their counsel may disclose the fact of such settlement, and defendants in the Litigation  
14 may disclose the terms of this Settlement Agreement to their accountants, financial, tax and legal  
15 advisors and such other Persons as required to comply with any obligations or requirements that  
16 may exist under applicable federal and state tax or securities laws.

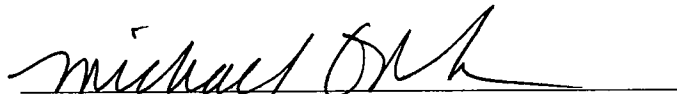
17           **IN WITNESS WHEREOF**, the Parties have executed and caused this Settlement  
18 Agreement to be executed by their duly authorized attorneys, as of the dates set forth below. .

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Dated: 9-17, 2009

COOLEY GODWARD KRONISH LLP



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Michael G. Rhodes (116127)  
COOLEY GODWARD KRONISH LLP  
Five Palo Alto Square  
3000 El Camino Real  
Palo Alto, CA 94306-2155

Attorneys for Defendant  
FACEBOOK, INC.

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Scott A. Kamber  
David A. Stampley  
KAMBEREDELSON, LLC  
11 Broadway, 22d Floor  
New York, NY 10004  
Tel.: (212) 920-3072

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Joseph H. Malley  
LAW OFFICE OF JOSEPH H. MALLEY  
1045 North Zang Boulevard  
Dallas, Texas 75208  
Ph. (214) 943-6100

Class Counsel, on behalf of Plaintiffs individually,  
and on behalf of the Class

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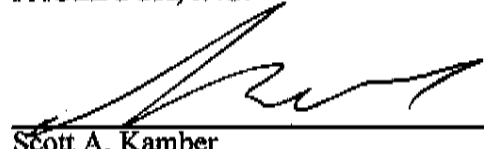
Dated: Sept. 17, 2009

COOLEY GODWARD KRONISH LLP

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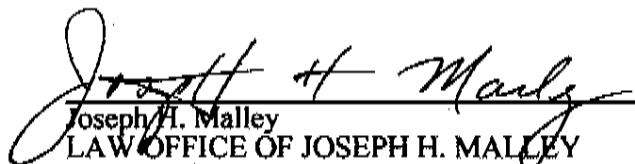
Michael G. Rhodes (116127)  
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Attorneys for Defendant  
FACEBOOK, INC.



---

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Tel.: (212) 920-3072



---

Joseph H. Malley  
LAW OFFICE OF JOSEPH H. MALLEY  
1045 North Zang Boulevard  
Dallas, Texas 75208  
Ph. (214) 943-6100

Class Counsel, on behalf of Plaintiffs individually,  
and on behalf of the Class



# Exhibit 1

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

SEAN LANE, MOHANNAED SHEIKHA,  
SEAN MARTIN, ALI SAMMOUR,  
MOHAMMAED ZIDAN, SARA KARROW,  
COLBY HENSON, DENTON HUNKER,  
FIRAS SHEIKHA, HASSEN SHEIKHA,  
LINDA STEWART, TINA TRAN,  
MATTHEW SMITH, ERICA PARNELL,  
JOHN CONWAY, AUSTIN MUHS,  
PHILLIP HUERTA, ALICIA HUNKER,  
individuals, on behalf of themselves and all  
others similarly situated, and M.H., a minor,  
by and through her parent REBECCA  
HOLEY,

Plaintiffs,

v.

FACEBOOK, INC., a Delaware Corporation,  
BLOCKBUSTER, INC., a Delaware  
Corporation, FANDANGO, INC., a Delaware  
Corporation, HOTWIRE, INC., a Delaware  
Corporation, STA TRAVEL, INC., a  
Delaware Corporation, OVERSTOCK.COM,  
INC., a Delaware Corporation,  
ZAPPOS.COM, INC., a Delaware  
Corporation, GAMEFLY, INC., a Delaware  
Corporation, and DOES 1-40, corporations,

Defendants.

Case No. 5:08-cv-03845-RS

**[PROPOSED]  
FINAL JUDGMENT AND ORDER OF  
DISMISSAL WITH PREJUDICE**

**This matter came before the Court for hearing pursuant to the Preliminary Approval and Notice Order, dated \_\_\_\_, 2009, on the application of the Plaintiffs and Facebook, Inc. (“Facebook”) (Plaintiffs and Facebook are collectively, the “Parties”) for**

approval of the settlement set forth in the Settlement Agreement dated \_\_\_\_, 2009 (“Settlement Agreement”). Due and adequate notice having been given of the Settlement (“Settlement”) set forth in the Settlement Agreement as required in the Preliminary Approval and Notice Order, and the Court having considered all papers filed and proceedings had herein and good cause appearing therefore, **IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

1. This Judgment incorporates by reference the definitions in the Settlement Agreement, and all defined terms used herein shall have the same meanings as set forth in the Settlement Agreement.

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

3. Pursuant to Federal Rule of Civil Procedure 54(b), there is no just reason for delay and final judgment is entered as to all defendants in the Litigation.

4. Pursuant to Federal Rule of Civil Procedure 23, this Court hereby affirms its findings and conclusion, set forth in the Preliminary Approval and Notice Order, that, for purposes of the Settlement Agreement and Settlement, this Class meets the prerequisites for maintenance of a class action under Rule 23. The Court hereby makes final its previously conditional certification of the Class.

5. Pursuant to Federal Rule of Civil Procedure 23(e), this Court hereby approves the Settlement and finds that the Settlement is, in all respects, fair, reasonable, and adequate for the Class. The Court finds that the Settlement Agreement and the Settlement are fair, reasonable, and adequate as to the Parties, grants final approval of the Settlement Agreement and the Settlement in all respects, and directs the Parties to perform the terms of the Settlement Agreement.

6. This Court hereby dismisses with prejudice and without costs (except as otherwise provided in the Settlement Agreement and by other Order of the Court) the Litigation as to Protected Persons. Notwithstanding the foregoing, this

**Judgment does not dismiss any of the individual claims asserted by any persons or entities who have validly and timely requested exclusion from the Settlement Class as provided for in the Preliminary Approval and Notice Order. A list of persons and entities who validly and timely requested exclusion is attached hereto as Exhibit 1. Notwithstanding the dismissal of the Litigation, Facebook shall not claim and shall not be awarded any costs, attorneys' fees or expenses to be paid by Class Counsel or from the Settlement Fund.**

**7. As set forth in paragraphs 5.1 – 5.4 of the Settlement Agreement, upon the Effective Date, the Representative Plaintiffs and each of the Class Members shall be deemed to have, and by operation of the Judgment shall have fully, finally, and forever released, relinquished, and discharged the Protected Persons from all Released Claims.**

**8. The persons identified in Exhibit 1 hereto have requested exclusion from the Settlement as of the deadline for opting out. These persons so identified shall not share in the benefits of the Settlement. In addition, this Final Approval Order and Judgment does not affect their legal rights to pursue any claims they may have against Defendants. With regard to all other members of the Class, such Class Members are hereinafter barred and permanently enjoined from prosecuting further the Released Claims against Protected Persons.**

**9. Under the circumstances, the notice of this Settlement provided to the Class Members in accordance with the Preliminary Approval and Notice Order was the best notice practicable of the proceedings and matters set forth herein, including the proposed Settlement, to all Persons entitled to such notice, and said notice fully satisfied the requirements of Federal Rule of Civil Procedure 23 and the requirements of due process.**

**10. The Court adjudges that the payment of attorneys' fees and expenses to Class Counsel and the payment of incentive awards to Class Representatives as**

respectively set forth in the Settlement Agreement are fair, reasonable and adequate, and that said attorneys' fees and expenses shall be paid to Class Counsel and said incentive awards shall be paid to Class Representatives, and the Court approves an award from the Settlement Amount of \$\_\_\_\_\_ to pay Class Counsel's attorneys' fees, plus \$\_\_\_\_\_ to reimburse Class Counsel for payment of costs and expenses reasonably incurred in prosecuting and settling the Action, plus \$\_\_\_\_\_ to pay incentive awards to Class Representatives. Neither Class Counsel's application for attorneys' fees and reimbursement of expenses, nor any order entered by this Court thereon, shall in any way disturb or affect this Judgment, and all such matters shall be construed separate from this Judgment.

11. Neither the Settlement Agreement nor the Settlement nor any act performed or document executed pursuant to or in furtherance of the Settlement Agreement or the Settlement (a) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claims, of any wrongdoing or liability of Protected Persons, or a finding or evidence that any claims that either were brought or could have been brought in the Litigation are appropriate for class treatment or that any requirement for class certification is or could otherwise be satisfied; or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of Protected Persons in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal.

12. Protected Persons may file this Judgment and/or the Settlement Agreement from this action in any other action that may be brought against them in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good-faith settlement, judgment bar or reduction, or any theory of claim preclusion or issue preclusion or similar defense or counterclaim.

**Protected Persons may rely on this Judgment and/or the Settlement Agreement from this action to seek a dismissal of any claim brought against Facebook or any of the Protected Persons, in any court whatsoever, which derives from the Released Claims.**

**13. Without affecting the finality of this Judgment in any way, this Court hereby retains continuing jurisdiction over (a) implementation of the Settlement; (b) distribution or disposition of the Settlement Fund; (c) further proceedings, if necessary, on applications for attorneys' fees, expenses, and costs in connection with the Litigation and the Settlement; and (d) the Parties for the purpose of construing, enforcing, and administering the Settlement Agreement.**

**14. The Court finds that during the course of the Litigation, the Parties and their respective counsel at all times complied with the requirements of Federal Rule of Civil Procedure 11, and that the Settlement Agreement is the product of good-faith negotiations.**

**15. If the Settlement does not become effective in accordance with the terms of the Settlement Agreement, then this Judgment shall be rendered null and void to the extent provided by and in accordance with the Settlement Agreement and shall be vacated and, in such event, all orders entered and releases delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Settlement Agreement.**

**IT IS SO ORDERED.**

DATED: \_\_\_\_\_

\_\_\_\_\_  
The Honorable Richard Seeborg  
United States District Court Magistrate Judge

# Exhibit 2

**NOTICE**

**NOTE: IF YOU ARE A MINOR, PLEASE IMMEDIATELY GIVE THIS NOTICE TO YOUR PARENT OR LEGAL GUARDIAN. ONLY YOUR PARENT OR GUARDIAN MAY INTERPOSE OBJECTIONS OR COMMENTS TO THE SETTLEMENT ON YOUR BEHALF OR EXCLUDE YOU FROM THE SETTLEMENT.**

**THIS NOTICE SUMMARIZES THE TERMS OF A PROPOSED CLASS-ACTION SETTLEMENT UNDER WHICH YOU MAY HAVE LEGAL RIGHTS.**

**From: Facebook**

**Subject: Federal Court's Notice of Proposed Class-Action Settlement. Please Read.**

**I. OVERVIEW**

A federal court has directed that this notice be sent to inform you of a proposed class-action settlement. Your rights and options – and the deadlines to exercise them – are explained in this Notice.

The settlement will resolve a lawsuit against Facebook, Inc. (“Facebook”), Blockbuster, Inc., Fandango, Inc., Hotwire, Inc., STA Travel, Inc, Overstock.com, Inc., Zappos.com, Inc. and Gamefly, Inc. (collectively, “Defendants”) filed in the Northern District of California, San Jose Division, Case No. 5:08-cv-03845-RS (the “Lawsuit”).

**A. WHAT IS THE LAWSUIT ABOUT?**

The case involves claims arising out of the Facebook Beacon program, which Facebook launched in November, 2007. Beacon was designed to allow users to share information with their selected friends about actions taken on affiliated, but third party, websites (such as the sites operated by the other defendants in this lawsuit).

The Beacon program is described as follows on the Facebook website at

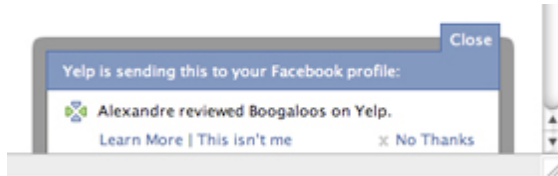
<http://www.facebook.com/beacon/faq.php> as follows:



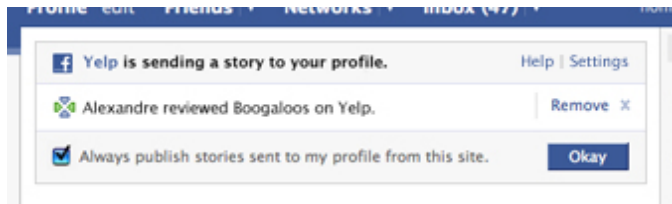
**How does Beacon work?**

Facebook Beacon is a way for you to bring actions you take online into Facebook. Beacon works by allowing affiliate websites to send stories about actions you take to Facebook. Here's how that process happens:

If you are logged in to Facebook and visit a Beacon Affiliate, an action you take (like writing a review or purchasing an item), may trigger that website to want to publish a story to Facebook. Before that happens, the website will send some information to Facebook in order for Facebook to generate a notification that will display in the lower right corner of your screen. If you click "No, Thanks", no stories or information will be published anywhere on Facebook. Any information that was sent to Facebook's servers will be deleted. If you click "Close" or ignore the story, the story will be sent to Facebook, but not yet published.



The next time you visit your home page, you'll see a message remind you that this story is being sent. There are three things you can do with this story: approve the story by clicking Okay, remove the story by clicking "Remove", or ignore the entire message by doing nothing. If you approve the story and click "Okay", the story will be published in your Wall and may appear in your friends' News Feeds. If you remove the story using the "Remove" link next to it, the story will never appear in your Wall or a friend's News Feed. If you ignore the whole message, it will go away after a few days and nothing will be published to Wall or News Feed. However, when you ignore a story, it remains queued, so that the next time you generate a Beacon story, this home page message will have two stories, instead of one.



Once this story has been published, it will appear in your Wall, and may appear in the News Feeds of your friends.

The plaintiffs in this lawsuit asserted allegations about the level of notice and choice they received regarding how Beacon collected information about their activities on affiliated websites and transmitted it to Facebook for publication. The complaint alleged violations of (i) the Electronic Communications Privacy Act, 18 U.S.C. §2510; (ii) Computer Fraud and Abuse Act, 18 U.S.C. 1030; (iii) Video Privacy Protection Act, 18 U.S.C. § 2710; (iv) California's Consumer Legal Remedies Act, California Civil Code § 1750; and (v) California's Computer Crime Law, Penal Code § 502.

**B. WHAT DOES THE SETTLEMENT DO?**

A proposed settlement agreement as set forth in a Stipulation and Agreement of Settlement (the "Settlement Agreement") will resolve the claims asserted in the lawsuit against Facebook and the other Defendants. Under the Settlement Agreement, Facebook will terminate the Beacon program within 60 days of Preliminary Approval, if so approved by the Court. In addition, Facebook has agreed to establish a gross settlement fund of \$9.5 million, the net proceeds

(determined after court approved administrative costs, attorneys' fees and other costs are paid) of which will fund a non-profit foundation ("Privacy Foundation"), the purpose of which shall be to fund projects and initiatives that promote the cause of online privacy, safety, and security. In consideration for the Settlement payment, Facebook and the other Defendants will be dismissed with prejudice from the lawsuit and will be released from any and all liability arising out of or relating to the claims and allegations in the lawsuit.

The Court still has to decide whether or not to approve the Settlement.

## **II. DETAILED INFORMATION ABOUT THE LAWSUIT AND SETTLEMENT**

### **A. WHY SHOULD I READ THIS NOTICE ?**

The proposed Settlement of this Lawsuit affects the rights of all current or former Facebook users in the United States whose activities on affiliated websites were communicated to Facebook via the Facebook Beacon program during the period of November 6, 2007 to [Date Preliminary Order is entered]. The Court ordered that this Notice be distributed to all potential class members because you have a right to know about the proposed Settlement of this Lawsuit and about your options relating to the Settlement, before the Court decides whether or not to approve the Settlement. The Court further ordered that a Publication Notice be published in one daily issue of the national edition of *USA Today*.

This Notice provides a summary of the terms of the proposed Settlement. It also explains the Lawsuit and Class Members' legal rights under the Settlement.

### **B. WHAT IS A CLASS ACTION?**

In a class action, one or more "Plaintiffs" sue on behalf of all people who have claims similar to theirs. All of these people are members of the "Class." One court resolves the issues for all members of the Class, except for those persons who exclude themselves, or opt-out, from the Class.

**C. WHY IS THERE A SETTLEMENT?**

Facebook does not believe that it did anything wrong. In fact, Facebook denies any and all liability for the claims alleged in the Lawsuit. The Court has not decided in favor of the Class or Facebook, and by requiring Facebook to provide this Notice, the Court is not expressing any view on the merits of the Lawsuit.

Instead, the parties engaged in a series of settlement negotiation sessions mediated by Anthony Piazza, Esq., of Gregorio, Haldeman, Piazza, Rotman, Frank & Feder. Eventually, both sides agreed to a Settlement. By settling their claims, both sides avoid the uncertainty and cost of a trial or appeal. The Representative Plaintiffs and Facebook believe that the Settlement is fair and in the best interest of all members of the Class.

On \_\_\_\_\_, 2009, the parties entered into a formal Settlement Agreement, which is on file with the Court and available through the following link: [WEBSITE]

**D. HOW DO I KNOW IF I AM PART OF THE SETTLEMENT?**

On \_\_\_\_\_, 2009, Judge Seeborg entered an order granting preliminary approval of the Settlement and certifying the following “Class” for purposes of the Settlement:

All Facebook members who, during the period of November 6, 2007 to [ Date Preliminary Order is entered], engaged in one or more activities on a website of any company, corporation, business enterprise, or other person that entered into an agreement with Facebook with respect to the Beacon functionality, which triggered Beacon, the program launched by Facebook on November 6, 2007 and all iterations thereof bearing the “Beacon” name.

Excluded from the Class are any judicial officer to whom this Litigation is assigned; Facebook and any of its affiliates; any current or former employees, officers, or directors of Facebook; any persons currently residing outside of the United States; and all Persons who timely and validly request exclusion from the Class pursuant to this Notice. Members of the Class that are not excluded from the Class are referred to as “Class Members.”

**E. WHO REPRESENTS ME IN THIS CASE?**

To represent the Class, the Court has appointed Sean Lane, Mohannaed Sheikha, Sean Martin, Ali Sammour, Mohammaed Zidan, Sara Karrow, Colby Henson, Denton Hunker, Firas Sheikha, Hassen Sheikha, Linda Stewart, Tina Tran, Matthew Smith, Erica Parnell, John Conway, Austin Muhs, Phillip Huerta, Alicia Hunker, and M.H., a minor, by and through her parent Rebecca Holey as Representative Plaintiffs, and their counsel of record, Scott A. Kamber and David A. Stampley of KamberEdelson, LLC and Joseph H. Malley of the Law Office of Joseph H. Malley, P.C as class counsel. If you want to be represented in this lawsuit by your own attorney, you may hire one at your own expense, and you may appear in this litigation through your own attorney.

**F. WHAT DOES THE SETTLEMENT PROVIDE?**

Under the Settlement, Facebook will terminate the Beacon program. In addition, Facebook will pay a total of nine million five hundred thousand dollars (\$9,500,000) into an interest-bearing account. The original deposit of \$9,500,000, plus accrued interest, will constitute the “Settlement Fund.” The Settlement Fund will be used: (i) to set up and a non-profit Privacy Foundation, described below; (ii) to pay certain costs of administering the Settlement, as approved by the Court; and (iii) to pay attorneys’ fees and expenses to Class Counsel in the amount awarded by the Court as well as any compensation to the Representative Plaintiffs, which the parties have proposed be in an amount totalling \$41,500 distributed among 21 individuals. After the deduction of administrative costs and Class Counsel’s attorneys’ fees and expenses and Representative Plaintiffs’ compensation, the balance of the Settlement Fund (the “Net Settlement Fund”) will be applied in accordance with the the Settlement Agreement.

In brief, the Plan of Allocation requires, among other things, that the Net Settlement Fund be used to form and establish the Privacy Foundation, the purpose of which shall be to fund projects and initiatives that promote the cause of online privacy, safety, and security. Individual class members will not be receiving a monetary benefit pursuant to the Settlement Agreement.

**G. WHAT AM I GIVING UP IF I PARTICIPATE IN THE SETTLEMENT?**

If the Settlement is granted final approval, the Court will enter a judgment dismissing all claims against Facebook and the other Defendants in the Lawsuit with prejudice, and releasing any and all claims for payment, non-economic, or injunctive relief of any kind or nature and any and all liabilities, demands, obligations, losses, actions, causes of action, damages, costs, expenses, attorneys' fees and any and all other claims of any nature whatsoever, arising from or relating to any of the allegations or statements made in, or in connection with, the Lawsuit (and including, without limitation, any and all claims based upon any of the laws, regulations, statutes, or rules cited, evidenced and referenced by all such allegations and statements), or any other known or unknown claims arising from or relating to Beacon (including, without limitation, arising from or relating to the use of data gathered through Beacon) against Facebook and any "Beacon Merchant," which is any company, corporation, business enterprise, or other person that entered into an agreement with Facebook with respect to Beacon or otherwise launched the Beacon program (specifically including, without limitation and by way of example, all non-Facebook defendants named in the Lawsuit, namely, Blockbuster, Inc., Fandango, Inc., Hotwire, Inc., STA Travel, Inc., Hotwire, Inc., Zappos.com, Inc., Overstock.com, Inc., and Gamefly, Inc.).

As a result, if you are a Class Member and do not exclude yourself from the Class, you will be barred from bringing any of the claims described above. This means that you will not be able to sue, continue to sue, or be part of another lawsuit against Facebook and its affiliates or any Beacon Merchant, for any of the claims identified in the preceding paragraph. You will be bound by all proceedings, orders, and judgments entered in connection with the Settlement, whether favorable or unfavorable. You will be represented by the Representative Plaintiffs and Class Counsel for purposes of the Settlement, unless you choose to hire your own lawyer at your own expense to represent you in this case.

In short, if you do not exclude yourself from the Class, and the Settlement is granted final approval, your claims against Facebook and its affiliates and all Beacon Merchants will be forever released as described above. If you do nothing, you will be deemed to have accepted the Settlement and any decisions of the Court with respect to the Settlement and the lawsuit.

**H. WHAT IF I WANT TO EXCLUDE MYSELF (OPT-OUT) FROM THE SETTLEMENT?**

If you do not want to remain a member of the Class and participate in the Settlement, then you may exclude yourself from the Class by mailing or delivering (email is not permitted) your written request, as follows:

Your original, signed request for exclusion must be RECEIVED on or before [DATE, 2009 and mailed to [insert claims administrator information]

Your request for exclusion must contain your name and address, be signed by you, and include the reference “*Lane et al. v. Facebook, Inc. et al.*, Civil Action No. 1:05-CV-01720.”

**I. HOW WILL THE LAWYERS IN THE CASE BE PAID?**

From the inception of the litigation in August 2008 to the present, Class Counsel have not received any payment for their services in bringing or prosecuting this case. Nor have they been reimbursed for any out-of-pocket expenses.

If the Court approves the Settlement, Class Counsel will make a motion, or “Fee Application,” to the Court for an award of attorneys’ fees of up to one third (1/3) of the Settlement Fund and reimbursement of expenses and costs already incurred or expected to be incurred in the prosecution of this Lawsuit. Class Counsel’s Fee Application may also include an application on behalf of certain of the Representative Plaintiffs for appropriate compensation for their time and effort serving as the Representative Plaintiffs. Such awards as may be granted by the Court will be paid from the Settlement Fund. The Fee Application will be heard at the Settlement hearing described below.

Class Counsel’s Fee Application will be based on various factors, including the time and effort already invested in the prosecution of the Lawsuit, the benefits obtained for the Class by

bringing this lawsuit, as specified herein and in the Settlement Agreement, as well as the time and effort that will be required of Class Counsel prior to final approval of this Settlement.

Facebook takes no position on the application for attorneys' fees, costs and expenses.

**J. CAN I COMMENT IN SUPPORT OF OR IN OPPOSITION TO THE SETTLEMENT?**

If you decide to remain in the Class (*i.e.*, you do not opt out), and you wish to comment in support of or in opposition to the Settlement or Class Counsel's Fee Application, you may do so by mailing or delivering (email is not permitted) your written comments, as follows:

Your original, signed comments must be filed with the Court no later than [DATE], 2009, at the following address:

Clerk of the United States District Court for the Northern District of California  
San Jose Division  
280 South 1st Street  
San Jose, CA 95113

Your written comments must contain your name and address, be signed by you, and include the reference "*Lane et al. v. Facebook, Inc. et al.*, Civil Action No. 1:05-CV-01720". You must also mail or deliver copies of such objections, papers, and briefs, such that they are received no later than [date], to the Parties' counsel at the addresses listed above, in Section II(H).

Objecting is simply telling the Court that you do not like the Settlement or any aspect of the Settlement. You can object only if you are a member of, and do not exclude yourself from, the Settlement Class. If you do not comply with these procedures and deadlines for submitting written comments or appearing at the hearing, you will not be entitled to object, speak at the hearing, you will not be entitled to contest in any way the Settlement or the Court's decision on the Fee Application, and you will not be able to contest any other orders or judgments that the Court may enter in connection with the Settlement.

**K. WHEN AND WHERE WILL THE COURT HOLD A HEARING ON THE SETTLEMENT?**

The Court will hold a hearing on [DATE] at [TIME], before the Honorable Richard Seeborg, United States Magistrate Judge for the Northern District of California, 280 South 1st Street San Jose, CA 95113.

The purpose of the hearing will be to determine: (a) whether the proposed Settlement should be approved as fair, reasonable and adequate; (b) whether the Class should be certified for purposes of the Settlement; (c) whether Class Counsel's Fee Application should be granted and in what amount; and (d) whether the lawsuit and Class Members' claims should be dismissed with prejudice pursuant to the Settlement.

The Court reserves the right to adjourn or continue the Settlement hearing without further notice to the Class.

**L. DO I HAVE TO COME TO THE HEARING?**

No. You are not required to attend the hearing in order to participate in the Settlement. Nor do you have to attend the hearing for the Court to consider your objection or other written comments. As long as you mail your written comments on time and follow the procedures set forth above, the Court will consider them.

However, you may attend the Settlement hearing at your own expense if you wish. You may also ask your own lawyer to attend on your behalf, at your expense.

**M. ARE THERE MORE DETAILS ABOUT THE SETTLEMENT?**

This Notice contains only a summary of certain provisions in the Settlement. The full terms and provisions of the Settlement are contained in the Settlement Agreement. A copy of the Settlement Agreement is on file with the Court and can be viewed through the following link: [website]. The Clerk of the Court, located at 280 South 1st Street, San Jose, CA 95113, maintains files containing the Settlement Agreement and all other documents filed in the lawsuit. Copies of these documents are available for inspection and copying during the Court's normal business hours.



**N. HOW DO I GET MORE INFORMATION ABOUT THE SETTLEMENT?**

You can get more information by sending a letter or email to [insert information from claims administrator regarding automated process]:

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Facebook employees cannot give you legal advice, and they will not be able to answer questions about the lawsuit or the settlement.

**PLEASE DO NOT TELEPHONE THE COURT ABOUT THIS NOTICE.**

Dated: \_\_\_\_\_

**BY ORDER OF:  
THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**



# Exhibit 3

## LEGAL NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

THIS NOTICE MAY CONCERN YOUR LEGAL RIGHTS IF YOU WERE A USER OF *www.facebook.com* BETWEEN NOVEMBER 6, 2007 AND SEPTEMBER \_\_, 2009.

THIS IS NOT AN ADVERTISEMENT OR ATTORNEY SOLICITATION.

IF YOU ARE A MINOR, IMMEDIATELY GIVE THIS NOTICE TO YOUR PARENT OR LEGAL GUARDIAN.

This notice is being published because a settlement has been proposed by all parties in the class action matter of:

SEAN LANE, *et al.*, Plaintiffs v. FACEBOOK, INC., BLOCKBUSTER, INC., FANDANGO, INC., HOTWIRE, INC., STA TRAVEL, INC., OVERSTOCK.COM, INC., ZAPPOS.COM, INC., GAMEFLY, INC. (Delaware corporations), and DOES 1-40, corporations, Defendants (Case No. 08-cv-3845 RS)

pending in the UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION.

### WHAT'S THE PURPOSE OF THIS NOTICE?

This notice is being published by order of the Court, before the Court considers final approval of the proposed settlement.

- This notice is to inform you of actions you may take in response to the proposed settlement.
- Your choices are: (1) do nothing; (2) opt out of the proposed settlement; or (3) object to the proposed settlement. If you choose to object to the proposed settlement or opt out of the proposed settlement, you must follow certain procedures.
- In addition, you may attend the Court's hearing about the proposed settlement.

This notice summarizes some of the information related to the proposed settlement. For more details, go to \_\_\_\_\_.

### WHAT'S THE LAWSUIT ABOUT?

Facebook, located on the web at *www.facebook.com*, is a social networking website. This lawsuit relates to Facebook's Beacon program, which Facebook launched in November of 2007. Beacon was designed to allow users to share information with their selected friends about actions taken on affiliated, but third-party, websites (such as the sites operated by the other Defendants in this lawsuit).

The plaintiffs filed this class action lawsuit on August 12, 2008, alleging that Facebook and its affiliates did not give users adequate notice and choice about Beacon and the collection and use of users' personal information. The Defendants deny that they did anything wrong, and the Court has not made any decision about which side was right in this lawsuit.

### WHAT DOES THE SETTLEMENT DO?

The proposed settlement would resolve this lawsuit before it gets to the point of asking the Court to take a position on which side is right—which could take a long time. Instead, both sides have agreed to the proposed settlement.

NOTE: This is not a settlement in which class members file claims to receive compensation. Under the proposed settlement agreement, Facebook will terminate the Beacon program. In addition, Facebook will provide \$9.5 million to set up a non-profit foundation that will: fund projects and initiatives that promote the cause of online privacy, safety, and security; cover attorneys' fees capped at no more than one-third of the settlement; as well as reimbursement of expenses and costs,

plus interest on the same; fund compensation for representative plaintiffs; and cover settlement administration costs.

### AM I AFFECTED?

You may be a Class Member if, between November 6, 2007 and September \_\_, 2009, you visited a Facebook-affiliated website that was participating in Facebook's Beacon program.

### WHAT ARE MY OPTIONS?

- *Do nothing:* If you choose to do nothing, you will be legally bound by the settlement. By doing nothing, you will be giving up the right to sue Facebook and the other Defendants over claims related to or arising out of the Beacon program.
- *Opt out:* If you do not want to be legally bound by the settlement, you must exclude yourself by [date] or you will not be able to sue, or continue to sue, the Defendants and certain other parties for the claims listed in the settlement agreement. To opt out, you *must* mail your original, signed exclusion request to:

*Counsel for Plaintiffs:* KamberEdelson, LLC, Attn: Scott Kamber, 11 Broadway, 22nd Floor, New York, NY 10004

*Counsel for Defendants:* Cooley Godward Kronish LLP, % Facebook Beacon Class Action Settlement, Attn: Michael Rhodes, 4401 Eastgate Mall, San Diego, CA 92121

- *Object:* If you wish to object to the terms of the settlement, you *must* file your objection no later than [date] with:

Clerk's Office, U.S. District Court, Northern District of California, 280 South First St., Rm. 2112, San Jose, CA 95113

In addition, you *must* mail or deliver copies of your objection and any related briefs or papers to the parties' counsel at the addresses listed above for receipt no later than [date].

If you under the age of 18, you must provide a copy of this Notice to your parent or guardian. Only your parent or guardian may interpose objections or comments to the settlement on your behalf or exclude you from the settlement.

- *Attend the settlement hearing:* On [date], the Court will hold a hearing to consider whether to grant final approval to the proposed settlement. You may comment in support of or in opposition to the proposed settlement, but you do not have to attend the hearing and, if you do choose to attend the hearing, you do not have to speak at the hearing.

For a full copy of the Notice of Settlement and details on required procedures, deadlines, and your options and obligations, visit [website].

# Exhibit 4

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

SEAN LANE, MOHANNAED SHEIKHA,  
SEAN MARTIN, ALI SAMMOUR,  
MOHAMMAED ZIDAN, SARA KARROW,  
COLBY HENSON, DENTON HUNKER,  
FIRAS SHEIKHA, HASSEN SHEIKHA,  
LINDA STEWART, TINA TRAN,  
MATTHEW SMITH, ERICA PARNELL,  
JOHN CONWAY, AUSTIN MUHS,  
PHILLIP HUERTA, ALICIA HUNKER,  
individuals, on behalf of themselves and all  
others similarly situated, and M. H., a minor,  
by and through her parent REBECCA  
HOLEY,

Plaintiffs,

v.

FACEBOOK, INC., a Delaware Corporation,  
BLOCKBUSTER, INC., a Delaware  
Corporation, FANDANGO, INC., a Delaware  
Corporation, HOTWIRE, INC., a Delaware  
Corporation, STA TRAVEL, INC., a  
Delaware Corporation, OVERSTOCK.COM,  
INC., a Delaware Corporation,  
ZAPPOS.COM, INC., a Delaware  
Corporation, GAMEFLY, INC., a Delaware  
Corporation, and DOES 1-40, corporations,

Defendants.

Case No. 5:08-cv-03845-RS

**[PROPOSED]  
PRELIMINARY APPROVAL AND  
NOTICE ORDER**

WHEREAS the Parties have applied for an order granting preliminary approval of a proposed settlement of the above-captioned action (“Litigation”), in accordance with a Settlement Agreement dated September [redacted], 2009 (“Settlement Agreement”), which together with the Exhibits annexed thereto set forth the terms and conditions of a proposed settlement of the Litigation whereby the Litigation will be dismissed with prejudice (“Settlement”);

WHEREAS the Court has read and considered the Settlement Agreement and the Exhibits annexed thereto; and

1 WHEREAS all defined terms contained herein shall have the same meanings as set forth  
2 in the Settlement Agreement;

3 NOW, THEREFORE IT IS HEREBY ORDERED THAT:

4 1. The Court grants preliminary approval of the Settlement Agreement and the  
5 proposed Settlement set forth herein, subject to further consideration at the Settlement Hearing  
6 described below.

7 2. The Court grants a stay of all proceedings in the Litigation until the Court renders  
8 a final decision on approval of the Settlement.

9 3. Solely for the purposes of the Settlement Agreement and the proposed Settlement,  
10 the Court certifies the following Class:

11 All Facebook members who, during the period of November 6, 2007 to the  
12 date this Order is entered, engaged in one or more activities on a website  
13 of any company, corporation, business enterprise, or other person that  
14 entered into an agreement with Facebook with respect to the Beacon  
15 functionality, which triggered Beacon, the program launched by Facebook  
16 on November 6, 2007 and all iterations thereof bearing the "Beacon"  
17 name.

18 Excluded from the Class are any judicial officer to whom this Litigation is assigned; Facebook  
19 and any of its affiliates; any current or former employees, officers, or directors of Facebook; any  
20 persons presently residing outside of the United States; and all Persons who timely and validly  
21 request exclusion from the Class pursuant to the Notice disseminated in the accordance with the  
22 this Order.

23 4. Solely for the purposes of the Settlement Agreement and the proposed Settlement  
24 this Court finds and concludes that the Class is ascertainable and that there is a well-defined  
25 community of interest in the questions of law and fact involved affecting the Class Members.  
26 The Court finds and concludes that (a) the Persons who are part of the Class are so numerous that  
27 joinder of all such Persons is impracticable; (b) there are questions of law or fact common to the  
28 Class that predominate over any individual questions; (c) the claims of the Representative  
Plaintiffs are typical of those of the Class; (d) in negotiating and entering into the Agreement, the

1 Representative Plaintiffs and their counsel have fairly and adequately represented and protected  
2 the interests of all Persons who are part of the Class; and (e) a class action is superior to other  
3 available methods for the fair and efficient adjudication of the controversy, considering (i) the  
4 interests of the Persons who are part of the Class individually controlling the prosecution of  
5 separate actions; (ii) the extent and nature of any litigation concerning the controversy already  
6 commenced by Persons who are part of the Class; (iii) the desirability or undesirability of  
7 concentrating litigation of the claims in this particular forum; and (iv) the difficulties likely to be  
8 encountered in the management of the Litigation as a class action.

9       **5.** To act on behalf of the Class in connection with the Agreement and proposed  
10 Settlement, the Court appoints Representative Plaintiffs Sean Lane, Mohannaed Sheikha, Sean  
11 Martin, Ali Sammour, Mohammaed Zidan, Sara Karrow, Colby Henson, Denton Hunker, Firas  
12 Sheikha, Hassen Sheikha, Linda Stewart, Tina Tran, Matthew Smith, Erica Parnell, John Conway,  
13 Austin Muhs, Phillip Huerta, Alicia Hunker, and M.H., a minor, by and through her parent  
14 Rebecca Holey as representatives of the Class and their counsel of record, Scott A. Kamber and  
15 David A. Stampley of KamberEdelson, LLC and Joseph H. Malley of the Law Office of Joseph  
16 H. Malley, P.C., as class counsel.

17       **6.** Within twenty (20) days of the date of this Order, Facebook shall pay to [Insert  
18 name of administrator], third party class action administrator, the sum of \$250,000 to be used to  
19 cover the administrative and other incidental costs associated with responding to inquiries from  
20 Class Members about this Settlement and the process by which this Settlement will be subject to  
21 judicial approval.

22       **7.** If the Settlement Agreement is not approved by the Court or the Settlement is  
23 terminated or fails to become effective in accordance with the terms of the Settlement Agreement,  
24 this conditional class certification shall be vacated without further order of the Court and without  
25 prejudice to the right of any party to seek or oppose class certification thereafter. Otherwise,  
26 upon the Effective Date of the Settlement, this class certification shall become unconditional.

27       **8.** A hearing (“Settlement Hearing”) shall be held before this Court on [date] at  
28 [time], at the United States District Court for the Northern District of California, San Jose



1 Division, 280 South 1st Street, San Jose, CA 95113, to determine whether the proposed  
2 Settlement, resolving and dismissing the Litigation on the terms and conditions provided for in  
3 the Settlement Agreement, is fair, reasonable, and adequate to the Class and should be approved  
4 by the Court; whether a Final Judgment and Order of Dismissal as provided in Exhibit 1 of the  
5 Settlement Agreement should be entered herein; and to determine the amount of fees and  
6 expenses that should be awarded to Class Counsel and the amount of the incentive award that  
7 shall be awarded to representatives of the Class. The Court may adjourn the Settlement Hearing  
8 without further notice to Class Members.

9           **9.** The Parties have proposed that the Class be given notice of the proposed  
10 Settlement in the following manner:

11           a. As soon as reasonably practicable after the date of this Order, Facebook  
12 shall distribute the Court approved Notice or links to such Notice, in a form substantially similar  
13 to that attached hereto as Exhibit 2, via an internal Facebook message in the “Updates” section of  
14 the Inbox section of Facebook users’ personal accounts targeting users whose PII was likely to  
15 have been transmitted to Facebook via Beacon, as determined by Facebook based on reasonable  
16 efforts; and

17           b. During the Notice Period, Facebook shall cause the Court-approved  
18 summary form of publication notice, in a form substantially similar to that attached hereto as  
19 Exhibit \_\_ (the “Publication Notice”), to be published in one daily issue of the national edition of  
20 *USA Today*.

21           c. Within ten (10) days of the filing of the Motion for the Entry of the  
22 Preliminary Approval and Notice Order with the Court, Facebook shall properly notify the  
23 appropriate state and federal officials of this Settlement Agreement pursuant to the Class Action  
24 Fairness Act of 2005, 28 U.S.C. § 1715.

25           The Court approves the form and content of the Notices, and finds that under the  
26 circumstances, transmission of the Notice as proposed by the Parties meets the requirements of  
27 Federal Rule of Civil Procedure 23 and due process, is the best notice practicable under the  
28 circumstances, and shall constitute due and sufficient notice to all Persons entitled thereto.

1           d.       At least seven (7) days prior to the Settlement Hearing, Facebook's  
2 Counsel shall serve on Class Counsel and file with the Court proof, by affidavit or declaration,  
3 that Facebook has fulfilled the requirements set forth in subsections (a) through (c) of this section  
4 (9), above.

5           **10.**     All Persons who fall within the Class definition and who do not timely and validly  
6 exclude themselves from the Class shall be bound by all determinations and judgments in the  
7 Litigation concerning the Settlement, whether favorable or unfavorable to the Class.

8           **11.**     Persons who wish to exclude themselves from the Class shall request exclusion  
9 within the time and the manner set forth in the Notice, such that the request is received on or  
10 before [\_\_\_\_\_, 2009], to the Parties' counsel at the addresses listed in the Notice.  
11 Unless the Court orders otherwise, no request for exclusion shall be valid unless it is made within  
12 the time and the manner set forth in the Notice. A request for exclusion must state: (a) the name,  
13 address, and telephone number of the person requesting exclusion and, if applicable, on whose  
14 behalf such exclusion is being requested, and (b) that the person wishes to be excluded from the  
15 Settlement Class. All persons who submit valid and timely requests for exclusion in the manner  
16 set forth in this paragraph shall have no rights under and shall not share in the settlement relief,  
17 and shall not be bound by any Order finally disposing of this matter.

18           **12.**     Any Class Member may enter an appearance in the Litigation, at the Class  
19 Member's own expense, individually or through counsel of the Class Member's choice. Any  
20 Class Member who does not enter an appearance will be represented by Class Counsel. Pending  
21 final determination of whether the Settlement should be approved, neither the Representative  
22 Plaintiffs nor any Class Member, either directly, representatively, or in any other capacity, shall  
23 commence or prosecute against any of the Protected Persons, any action or proceeding in any  
24 court or tribunal asserting any of the Released Claims.

25           **13.**     Any Class Member may appear and show cause why the proposed Settlement  
26 should or should not be approved as fair, reasonable, and adequate; or why a Judgment should or  
27 should not be entered thereon; or why attorneys' fees and expenses should or should not be  
28 awarded to Class Counsel; provided, however, that no Class Member or any other Person shall be

1 heard on or entitled to contest the Court's decision on any of the foregoing matters unless that  
2 Person has (a) no later than [date], filed written objections and any supporting papers and briefs  
3 with the Clerk of the United States District Court for the Northern District of California, 280  
4 South 1st Street, San Jose, CA 95113; and (b) mailed or delivered copies of such objections,  
5 papers, and briefs, such that they are received no later than [date], to the Parties' counsel at the  
6 addresses listed in the Notice.

7 **14.** Unless otherwise ordered by the Court, any Class Member who does not make his,  
8 her, or its objection in the manner provided shall be deemed to have waived such objection and  
9 shall forever be foreclosed from making any objection to the fairness, reasonableness, or  
10 adequacy of the proposed Settlement, or to any award of attorneys' fees and expenses to Class  
11 Counsel.

12 **15.** The Settlement Fund shall be kept under the control and possession of Facebook  
13 but within twenty (20) days of this Order, the Settlement Fund shall be deposited into a separate  
14 bank account specifically established by Facebook for purpose of this Settlement.

15 **16.** All papers in support of the Settlement or any application by Class Counsel for  
16 attorneys' fees or reimbursement of expenses shall be filed and served by [date]. The Parties may  
17 respond to any objection to the Settlement or the application for attorneys' fees and  
18 reimbursement of expenses, provided that such response is filed and served no later than [date].

19 **17.** Any application for attorneys' fees or reimbursement of expenses made by Class  
20 Counsel shall be considered separately from the fairness, reasonableness, and adequacy of the  
21 Settlement. The application by Class Counsel for attorneys' fees and/or reimbursement of  
22 expenses shall be filed and served at least fourteen (14) calendar days prior to the Settlement  
23 Hearing.

24 **18.** At the Settlement Hearing, the Court shall determine whether to grant any  
25 application for attorneys' fees or reimbursement of expenses made by Class Counsel.

26 **19.** All reasonable costs incurred in giving notice to Class Members and administering  
27 the Settlement shall be borne and paid as set forth in the Settlement Agreement.  
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**20.** Neither the Settlement Agreement, nor any of its terms or provisions, nor any of the negotiations or proceedings in connection therewith, shall be construed as an admission or concession by Facebook of the truth of any of the allegations in the Litigation, or of any liability, fault, or wrongdoing of any kind.

**21.** The Court reserves the right to adjourn the date of the Settlement Hearing without further notice to the Class Members, and retains jurisdiction to consider all further applications arising out of or in connection with the proposed Settlement. The Court may approve the Settlement, with such modifications as may be agreed to by the Parties, if appropriate, without further notice to the Class.

**22.** If the Settlement is not approved or consummated for any reason whatsoever, the Settlement and all proceedings had in connection therewith shall be without prejudice to the rights of the Parties status quo ante.

DATED: \_\_\_\_\_

\_\_\_\_\_  
The Honorable Richard Seeborg  
United States District Court Magistrate Judge