

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JAN MARKELS, ET AL.,

PLAINTIFFS,

v.

AARP,

DEFENDANT.

CASE NO. 4:24-cv-05499-YGR

**ORDER GRANTING PRELIMINARY
 APPROVAL OF SETTLEMENT AND SETTING
 DEADLINES FOR NOTICE, OBJECTION,
 EXCLUSION, AND FINAL FAIRNESS
 HEARING**

Re: Dkt. Nos. 112, 113.

On September 9, 2025, the Court held a hearing on the unopposed motion of plaintiffs for conditional certification of a settlement class in this action; preliminary approval of the parties' proposed settlement; direction of notice to the class; and setting a date for the hearing on final approval of the settlement. (Dkt. No. 112.) Simon Grille appeared for plaintiffs and Matthew Brown appeared for defendant.

Having considered the motion briefing, the arguments of counsel, the relevant law, the terms of the settlement agreement and the class notice, as well as the record in this case, and based on the reasons and terms set forth herein, the Court **GRANTS** the parties' motion for preliminary approval of class action settlement.¹

I. BACKGROUND

Plaintiffs filed the operative putative class action complaint on July 19, 2024 against defendant AARP "alleging that AARP disclosed to [non-defendant interested party] Meta the specific video materials its subscribers requested or obtained from its website without first obtaining their consent in the form required under the [Video Privacy Protection Act ("VPPA")]." (Dkt. No. 112, Plaintiffs' Notice of Motion and Motion for Preliminary Approval of Class Action Settlement

¹ Plaintiffs further request that specific "opt out" threshold be filed under seal pursuant to the terms of the protective order governing the case. (Dkt. No. 113.) Having reviewed the motion and the information sought to be sealed, and for the reasons stated on the record at the hearing, the Court **GRANTS** the sealing request temporarily until final approval, at which point it shall be unsealed.

(“Mtn.”) at 2.) Plaintiff’s second amended complaint alleges claims for violations of the VVPA and California’s Unfair Competition Law, § 17200 *et seq.* (“UCL”).

The parties reached a settlement prior to class certification with the assistance of an experienced mediator Hon. Jeremy D. Fogel.

B. Terms of the Settlement Agreement

Under the terms of the Settlement Agreement, defendant will pay \$12,500,000 into a common settlement fund. This amount includes attorneys’ fees and costs, the cost of class notice and settlement administration, and the class representative’s service award.

1. Attorneys’ Fees and Costs

Under the Settlement Agreement, Plaintiff’s counsel agreed to seek up to 30% of the fund in attorneys’ fees and no more than \$270,000 for expense reimbursement. The common settlement fund also includes a provision for up to \$10,000 to be paid to class representatives as an incentive award.

2. Class Relief

The class consists of

all persons in the United States who, between September 27, 2020, and the date of Preliminary Approval, requested or obtained video content on AARP.org while in the United States and at a time the person had a Facebook account and was either an AARP member or a registered user of AARP.org.

(Mtn. at 5 (the “Settlement Class”).) Upon receiving notice, class members must demonstrate eligibility for payment by attesting to their eligibility and providing a link to their Facebook profile, “which they can easily paste in the Claim Form.” (*Id.* at 6.) After reviewing a random sample of claims and providing a reasonable opportunity to cure any defective claims, the Claims Administrator will divide the settlement fund by the total number of valid claims. “Payments will be made electronically via PayPal, Zelle, Venmo, or ACH or via physical check” and all approved payments that are unclaimed after 90 days “will be redistributed pro rata to Class Members who cashed the payment during the initial distribution round.” (*Id.* at 7.) No *cy pres* award is contemplated by the Settlement Agreement. Parties estimate that class members who receive payments are therefore likely to receive between \$47 and \$237 each.

Under the Settlement Agreement, AARP further agreed to, within 45 days of preliminary approval,

cease or limit the operation of the Meta Pixel on any pages on the AARP.org website that include video content, where the information transmitted via the Meta Pixel identifies a person as having requested or obtained specific video materials on that page, unless: (a) the VPPA is amended or repealed in relevant part, judicially invalidated in relevant part, or judicially construed not to be violated by use of the Meta Pixel or other website tracking technology in similar circumstances; or (b) AARP obtains consent in the form required by the VPPA, 18 U.S.C. § 2710(b)(2)(B); or (c) the disclosure of information to Meta via the Meta Pixel would not violate the prevailing legal standard under U.S. Supreme Court or Ninth Circuit law.

(*Id.* at 6.)

II. PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

A. Legal Standard

A court may approve a proposed class action settlement of a class only “after a hearing and on finding that it is fair, reasonable, and adequate” and that it meets the requirements for class certification. Fed. R. Civ. P. 23(e)(2). In reviewing the proposed settlement, a court need not address whether the settlement is ideal or the best outcome, but only whether the settlement is fair, free of collusion, and consistent with plaintiff’s fiduciary obligations to the class. *See Hanlon v. Chrysler Corp.*, 150 F.3d at 1027. The *Hanlon* court identified the following factors relevant to assessing a settlement proposal: (1) the strength of the plaintiff’s case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceeding; (6) the experience and views of counsel; (7) the presence of a government participant; and (8) the reaction of class members to the proposed settlement. *Id.* at 1026 (citation omitted); *see also Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004).

Settlements that occur before formal class certification also “require a higher standard of fairness.” *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 458 (9th Cir. 2000). In reviewing such settlements, in addition to considering the above factors, a court also must ensure that “the

settlement is not the product of collusion among the negotiating parties.” *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 946-47 (9th Cir. 2011).

B. Class Definition and Basis for Conditional Certification

The Settlement Agreement, attached hereto as **Exhibit A**, defines the class as:

all persons in the United States who, between September 27, 2020, and the date of Preliminary Approval, requested or obtained video content on AARP.org while in the United States and at a time the person had a Facebook account and was either an AARP member or a registered user of AARP.org.

(*Id.* at 5.) The proposed class is largely the same as alleged in the complaint, though the Agreement’s Class Definition includes the date the class period begins, clarifies that members must have had a Facebook account (as opposed to merely “used” Facebook), and states that members qualify if they “requested or obtained video content” (as opposed to “viewed prerecorded video content”).

The Court finds that, for purposes of settlement, plaintiffs have satisfied the requirements of Rule 23(a) as well as the requirements for certification under one or more subsections of Rule 23(b). With respect to numerosity under Rule 23(a)(1), the Settlement Class includes an estimated 2,250,000 members, making it so numerous that joinder of all members is impracticable.

Rule 23(a)(2) commonality requires “questions of fact or law common to the class,” though all questions of fact and law need not be in common. *Hanlon*, 150 F.3d at 1026. The focus of this action—whether class members requested or obtained video content from AARP’s website while operating a Facebook account—is common to all class members.

Rule 23(a)(3) requires that the plaintiff show that “the claims or defenses of the representative parties are typical of the claims or defenses of the class.” Plaintiff and members of the Settlement Class were all allegedly subject to disclosure of their digital subscriber identities and video preferences to a third party without consent, making plaintiff’s claims typical of class members.

With respect to Rule 23(a)(4), the Court finds the representative parties and class counsel have fairly and adequately represented the interests of the Class. No conflicts of interest appear as between plaintiff and the members of the Settlement Class. Class Counsel have demonstrated that they are adequate to represent the Settlement Class as well.

1 The Settlement Class further satisfies Rule 23(b)(3) in that common issues predominate and
 2 “a class action is superior to other available methods for fairly and efficiently adjudicating” the
 3 claims here. Resolution of plaintiff’s claims hinge on AARP’s uniform policies and practices. As a
 4 result, the resolution of these alleged class claims would be achieved through common forms of
 5 proof. Furthermore, the superiority requirement is met because the present case will be better
 6 handled collectively by way of settlement. This will allow plaintiffs to recover for their relatively
 7 modest claims without the risk of extensive litigation.

8 Based on the foregoing, the proposed class is conditionally certified pursuant to Rule
 9 23(c).

10 **C. Settlement Agreement Appears Fair and Reasonable**

11 The settlement agreement, a copy of which is attached hereto as Exhibit A (“Settlement
 12 Agreement”), is granted preliminary approval pursuant to Rule 23(e)(2). Based upon the
 13 information before the Court, the Settlement Agreement falls within the range of possible approval
 14 as fair, adequate and reasonable, and there is a sufficient basis for notifying the Class and for
 15 setting a Fairness and Final Approval Hearing.

16 As to the *Hanlon* factors, the Court finds that they indicate the settlement here is fair and
 17 reasonable. Proceeding to trial would have been costly; recovery was not guaranteed; and there
 18 was the possibility of protracted appeals. Even if plaintiff prevailed, a claims process would still
 19 be required even after trial, because class members could not otherwise be identified. The
 20 settlement occurred only after extensive litigation including: several rounds of motion to dismiss
 21 briefing and argument, lengthy and thorough expert and fact discovery, and multiple rounds of
 22 settlement negotiations. Counsel for both parties are highly experienced. The record does not
 23 indicate collusion or self-dealing. *See In re Bluetooth*, 654 F.3d at 946-47.

24 The Settlement Agreement appears to have been the product of arm’s length and informed
 25 negotiations. The relief provided for the Class appears to be adequate, taking into account:

- 26 (i) the costs, risks, and delay of trial and appeal;
- 27 (ii) the effectiveness of any proposed method of distributing relief to the class, including the
- 28 method of processing class-member claims;

- (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
 (iv) any agreements required to be identified under Rule 23(e)(3), of which there are none.

Moreover, the Settlement Agreement appears to treat Class members equitably relative to each other.

Based on the foregoing, the Court conditionally certifies the class and provisionally appoints Adam E. Polk, Simon S. Grille, Reid Gaa, and Anthony Rogari of Girard Sharp LLP as Class Counsel and plaintiffs Jan Markels, William Martin, and Lynn Seda as class representatives.

III. PLAN OF NOTICE, ALLOCATION, AND ADMINISTRATION

A. Notice Plan

A court must “direct notice [of a proposed class settlement] in a reasonable manner to all class members who would be bound by the proposal.” Fed. R. Civ. P. 23(e)(1). “The class must be notified of a proposed settlement in a manner that does not systematically leave any group without notice.” *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 624 (9th Cir. 1982). Adequate notice requires: (i) the best notice practicable; (ii) reasonably calculated, under the circumstances, to apprise the Class members of the proposed settlement and of their right to object or to exclude themselves as provided in the settlement agreement; (iii) reasonable and constitute due, adequate, and sufficient notice to all persons entitled to receive notice; and (iv) meet all applicable requirements of due process and any other applicable requirements under federal law. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985). Due process requires “notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950).

The parties’ proposed notice plan appears to be constitutionally sound in that plaintiffs have made a sufficient showing that it is: (i) the best notice practicable; (ii) reasonably calculated, under the circumstances, to apprise the Class members of the proposed settlement and of their right to object or to exclude themselves as provided in the settlement agreement; (iii) reasonable and constitute due, adequate, and sufficient notice to all persons entitled to receive notice; and (iv)

1 meet all applicable requirements of due process and any other applicable requirements under
2 federal law.

3 The Court approves form of the long-form Notice of Proposed Class Action Settlement
4 attached as **Exhibit B** to this Order. The Court also approves the form of the Short-Form Notice
5 attached hereto as **Exhibit C** and Email Notice Form attached hereto as **Exhibit D**. Taken together
6 these notices are sufficient to inform Class members of the terms of the Settlement Agreement,
7 their rights under the Settlement Agreement, their rights to object to or comment on the Settlement
8 Agreement, their right to receive a payment or opt out of the Settlement Agreement, the process
9 for doing so, and the date and location of the Fairness and Final Approval hearing. The forms of
10 plan of notice are therefore **APPROVED**.

11 **B. Plan of Allocation**

12 The Court preliminarily approves the proposed plan of allocation set forth in the Motion
13 and the class notices. In connection therewith, the Court approves the Proof of Claim form,
14 attached hereto as **Exhibit E**.

15 **C. Settlement Administrator**

16 Simpluris, Inc. is appointed to act as the Settlement Administrator, pursuant to the terms
17 set forth in the Settlement Agreement.

18 The Settlement Administrator shall distribute the Class Notice according to the notice plan
19 described in the Settlement Agreement and substantially in the form approved herein, no later than
20 thirty-five (35) calendar days following preliminary approval (“Notice Date”). Proof of
21 distribution of the Class Notice shall be filed by the parties in conjunction with the motion for
22 final approval.

23 AARP is directed to provide to the Settlement Administrator the Class members’ contact
24 data as specified by the Settlement Agreement no later than seven (7) business days following
25 preliminary approval.

26 **D. Exclusion/Opt-Out**

27 Any Class Member shall have the right to be excluded from the Class by mailing a request
28 for exclusion to the Settlement Administrator no later than 110 days following preliminary

1 approval. Requests for exclusion must be in writing and set forth the name and address of the
2 person who wishes to be excluded, and must be signed by the class member seeking exclusion.

3 Any Class Member who does not request exclusion from the settlement class as provided
4 above shall be bound by the terms and provisions of the Settlement Agreement upon its final
5 approval, including but not limited to the releases, waivers, and covenants described in the
6 Settlement Agreement, whether or not such person or entity objected to the Settlement Agreement
7 and whether or not such person or entity makes a claim upon the settlement funds.

8 **E. Objections**

9 Any Class Member who has not submitted a timely request for exclusion from the
10 Settlement Agreement shall have the right to object to (1) the Settlement Agreement, (2) the plan
11 of allocation; and/or Class Counsel's motion for attorneys' fees and Class Representative Awards
12 by mailing to the Settlement Administrator a written objection and stating whether they intend to
13 appear at the Fairness Hearing, as set forth in the Class Notice, no later than 110 days following
14 preliminary approval. Failure to submit a timely written objection will preclude consideration of
15 the Class Member's later objection at the time of the Fairness Hearing.

16 **F. Attorneys' Fees and Class Representative Awards**

17 Plaintiffs and their counsel shall file their motion for attorneys' fees and for Class
18 Representative awards no later than 75 days following preliminary approval. Each settlement class
19 member shall have the right to object to the motion for attorneys' fees and Class Representative
20 awards by filing a written objection with the Court no later than 110 days following preliminary
21 approval, as stated in paragraph 8 above.

22 Plaintiffs shall file a reply brief responding to any timely objection no later than 125 days
23 following preliminary approval.

24 **G. Fairness and Final Approval Hearing**

25 All briefs, memoranda and papers in support of final approval of the settlement shall be
26 filed no later than 75 days following preliminary approval.

27 The Court will conduct a Fairness and Final Approval Hearing on Tuesday, February 10,
28 2026 at 2:00 p.m., to determine whether the Settlement Agreement should be granted final

approval as fair, reasonable, and adequate as to the Class. The Court will hear all evidence and argument necessary to evaluate the Settlement Agreement and will consider Class Counsel's motion for attorneys' fees and for Class Representative awards.

Class members may appear, by counsel or on their own behalf, to be heard in support of or opposition to the Settlement Agreement and Class Counsel's Motion for attorneys' fees and Class Representative awards by filing a Notice of Intention to Appear no later than January 13, 2026.

The Court reserves the right to continue the date of the final approval hearing without further notice to Class members.

The Court retains jurisdiction to consider all further applications arising out of or in connection with the Settlement.

H. Post-Distribution Accounting

If final approval is granted, the parties will be required to file a Post-Distribution Accounting in accordance with this District's Procedural Guidance for Class Action Settlements and at a date set by the Court at the time of the final approval hearing. Counsel should prepare accordingly.

Summary of Key Dates	
Event	Date
Class data to be provided to Settlement Administrator	7 business days following preliminary approval.
Class Notice to be sent by	35 calendar days following preliminary approval
Class Counsel to file their motion for fees and costs and Class Representative awards	75 days following preliminary approval
Motion for Final Approval to be filed by	75 days following preliminary approval
Postmark deadline to submit objection or request for exclusion	110 days following preliminary approval
Class counsel and settlement administrator to submit supplemental statements regarding status of notice program, objections, opt-outs	14 days before final approval hearing

Fairness and Final Approval Hearing

Tuesday, February
10, 2026 at 2:00
p.m.

NOTE: Subject to
change without
further notice to the
Class.

IT IS SO ORDERED.

This terminates Docket Nos. 112 and 113.

Dated: September 12, 2025


YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE

United States District Court
Northern District of California