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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

In re Yapstone Data Breach

Case No. 4:15-CV-04429-JSW

Hon. Jeffrey S. White

~~PROPOSED~~ ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT AND
APPROVING NOTICE PROGRAM

1 WHEREAS, a consolidated class action is pending before the Court entitled *In re*
2 *Yapstone Data Breach*, Case No. 4:15-CV-04429-JSW; and

3 WHEREAS, Plaintiffs (also referred to as “Consumer Plaintiffs” or “Settlement Class
4 Representatives” for purposes of the Settlement Agreement), for themselves and on behalf of the
5 Settlement Class, and Yapstone Holdings, Inc., formerly known as Yapstone, Inc., (“Yapstone”)
6 have entered into a Settlement Agreement, which, together with the exhibits attached thereto, sets
7 forth the terms and conditions for a proposed settlement and dismissal of the Consumer Action
8 with prejudice as to Yapstone for the claims of the Settlement Class upon the terms and
9 conditions set forth in the Settlement Agreement, and the Court having read and considered the
10 Settlement Agreement and exhibits attached thereto;

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

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

15 1. Terms and phrases in this order shall have the same meaning as ascribed to them in
16 the Parties’ Settlement Agreement.

17 Settlement Class Certification

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

19 a. The Settlement Class is defined to include: “All persons or entities who
20 were sent an Incident Notice.”

21 b. The Settlement Class satisfies the requirements for class certification under
22 Fed. R. Civ. P. 23(a). It consists of approximately 182,500 individuals,
23 there are questions of law or fact common to the Settlement Class,
24 Plaintiffs’ claims are typical of those of the Settlement Class, and Plaintiffs
25 will fairly and adequately protect the interests of the Settlement Class.

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

4 3. The Court hereby appoints Plaintiffs Jonathan Koles, Christopher Bonnema,
5 Daniel Adams, James Mitchell, and Robert McGuire as Settlement Class Representatives.

6 4. The Court hereby appoints Tina Wolfson and Robert Ahdoot of Ahdoot &
7 Wolfson, PC as Class Counsel as Class Counsel.

8 Preliminary Approval

9 5. Plaintiffs have moved the Court for an order approving the settlement of the
10 Consumer Action in accordance with the Settlement Agreement, which, together with the
11 documents incorporated therein, sets forth the terms and conditions for a proposed settlement and
12 dismissal of the Consumer Action with prejudice against Yapstone. The Court, having read and
13 considered the Settlement Agreement and having heard the Parties and being fully advised in the
14 premises, hereby preliminarily approves the Settlement Agreement in its entirety subject to the
15 Final Approval Hearing referred to in Paragraph 18 of this order.

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

18 7. The Court finds that, subject to the Final Approval Hearing, the Settlement
19 Agreement falls within the range of possible approval as fair, reasonable, adequate, and in the
20 best interests of the Settlement Class as to their claims against Yapstone. The Court further finds
21 that the Settlement Agreement substantially fulfills the purposes and objectives of the class
22 action, and provides beneficial relief to the Settlement Class. The Court also finds that the
23 Settlement Agreement: (a) is the result of serious, informed, non-collusive arms' length
24 negotiations involving experienced counsel familiar with the legal and factual issues of this case
25 and made with the assistance of Hon. Richard Kramer (Ret.) of JAMS; (b) is sufficient to warrant
26 notice of the settlement and the Final Approval Hearing to the Settlement Class; (c) meets all
27 applicable requirements of law, including Federal Rule of Civil Procedure 23, and the Class
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1 Action Fairness Act (“CAFA”), 28 U.S.C. § 1715; and (d) is not a finding or admission of
2 liability by Yapstone.

3 Notice and Administration

4 8. Kurtzman Carson Consultants LLC (“KCC”) is hereby appointed as Settlement
5 Administrator and shall perform all the duties of the Settlement Administrator as set forth in the
6 Settlement Agreement and this order.

7 9. The Court finds that the notice plan and all forms of Notice to the Class as set forth
8 in the Settlement Agreement and Exhibits E and G thereto (the “Notice Program”) is reasonably
9 calculated to, under all circumstances, apprise the members of the Settlement Class of the
10 pendency of this action, the certification of the Settlement Class, the terms of the Settlement
11 Agreement, and the right of members to object to the settlement or to exclude themselves from
12 the Class. The Notice Program is consistent with the requirements of Rule 23 and due process,
13 and constitutes the best notice practicable under the circumstances.

14 10. The Court thus hereby approves the Notice Program, including the proposed
15 Notice documents attached as Exhibits E and G to the Settlement Agreement. The Court also
16 approves the plan for Claims administration, including the Claim Form attached as Exhibit C to
17 the Settlement Agreement. The Parties may, by agreement, revise the Notice or Claim Form
18 documents in ways that are not material, or in ways that are appropriate to update those
19 documents for purposes of accuracy or formatting.

20 11. Pursuant to the Settlement Agreement, within ten (10) calendar days after the entry
21 of the Preliminary Approval Order and to be substantially completed no later than the Notice
22 Deadline, and subject to the requirements of the Settlement Agreement and this Preliminary
23 Approval Order, the Parties shall coordinate with the Settlement Administrator to provide Notice
24 pursuant to the Notice Program as follows:

- 25 a. The Settlement Administrator shall send the Summary Notice via e-mail to
26 all Settlement Class Members for whom Yapstone can ascertain an e-mail
27 address from its records;

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- b. In the event an e-mail address for a Settlement Class Member cannot be ascertained by Yapstone or the Settlement Administrator learns (through an email “bounce-back” or otherwise) that the e-mail address in Yapstone’s records is invalid, the Settlement Administrator shall send the Summary Notice via U.S. Mail to all Settlement Class Members for whom Yapstone can ascertain a mailing address from its records. For any Mail Notices that are returned undeliverable with forwarding address information, the Settlement Administrator shall re-mail the Summary Notice to the updated address as indicated. For any U.S. Mailed Summary Notices that are returned undeliverable without forwarding address information, the Settlement Administrator shall use reasonable efforts to identify updated mailing addresses (such as running the mailing address through the National Change of Address Database) and re-mail the Summary Notice to the extent updated addresses are identified. The Settlement Administrator need only make one attempt to re-mail any Summary Notices that are returned as undeliverable;
- c. Publishing, on or before the Notice Date, the Long Form Notice on the Settlement Website, as specified in the Preliminary Approval Order and as set forth in the Declaration of the Settlement Administrator, attached hereto as Exhibit H; and
- d. Providing the Internet URL address of the Settlement Website (www.yapstonesettlement.com) in the Long Form Notice and the Summary Notice.

12. Redemption Claimants who wish to receive their benefits under the Settlement Agreement must complete and submit a valid Claim Form. All Claim Forms must be postmarked or received by the Settlement Administrator not later than one hundred and eighty (180) days after the Notice Deadline (the “Claims Deadline”).

1 Exclusion

2 13. Settlement Class Members who wish to exclude themselves from the Settlement
3 Class for purposes of this Settlement may do so by submitting a request for exclusion to the
4 Settlement Administrator not later than forty-five (45) days after the Notice Deadline (the “Opt-
5 Out Deadline”). The request for exclusion must comply with the exclusion procedures set forth
6 in the Settlement Agreement and include from the Settlement Class Member (a) their full name
7 (first, middle, last and any suffix); (b) email address and mailing address; (c) a clear statement
8 communicating that they elect to be excluded from the Settlement Class, do not wish to be a
9 Settlement Class Member, and elect to be excluded from any judgment entered pursuant to the
10 Settlement; (d) the case name and case number; and (e) their signature. A request for exclusion
11 may not request exclusion of more than one member of the Settlement Class.

12 14. Any member of the Settlement Class who timely requests exclusion consistent
13 with these procedures may not file an objection to the Settlement and shall be deemed to have
14 waived any rights or benefits under this Settlement. However, Settlement Class Members who
15 fail to submit a valid and timely request for exclusion shall be bound by all terms of the
16 Settlement Agreement and the Final Judgment, regardless of whether they have requested
17 exclusion from the Settlement.

18 Objections

19 15. Any member of the Settlement Class who has not timely filed a request for
20 exclusion may object to the granting of final approval to the settlement. Settlement Class
21 Members may object on their own, or may do so through separate counsel at their own expense.

22 16. Any written objection to the Settlement must: (i) provide identifying information
23 of the objector, including the full legal name, address, phone number, and the same contact
24 information for any counsel representing the objector; (ii) clearly identify the case name and
25 number; (iii) include a statement containing the basis and reasons for the objection, and the
26 amount of time for speaking that will be requested by the objector at the Fairness Hearing; (iv) be
27 submitted to the Court by filing the written objection through the Court’s Case
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1 Management/Electronic Case Files system, by mailing the written objection to the Class Action
2 Clerk for United States District Court for the Northern District at 1301 Clay Street, Oakland,
3 California 94612, or by filing the written objection in person at any location of the United States
4 District Court for the Northern District of California; and (v) be filed or postmarked on or before
5 the motion for final approval deadline provided in the Court’s Preliminary Approval Order. If the
6 objector is represented by counsel, said counsel shall request admission to the Northern District of
7 California for the purposes of the objection.

8 17. Any member of the Settlement Class who fails to file and serve a timely written
9 objection in compliance with the requirements of this order and the Settlement Agreement shall
10 be deemed to have waived any objections and shall be foreclosed from making any objections
11 (whether by appeal or otherwise) to the Settlement.

12 Fairness Hearing

13 18. A fairness hearing (the “Final Approval Hearing” or “Fairness Hearing”) shall be
14 held before this Court on August 4, 2017 at 9:00 in Courtroom 5 on the 2nd Floor of the Oakland
15 Courthouse, 1301 Clay Street, Oakland, CA 94612 to consider: (a) whether the proposed
16 settlement of the Consumer Action on the terms and conditions provided for in the Settlement
17 Agreement is fair, reasonable and adequate and should be given final approval by the Court; (b)
18 whether a final judgment should be entered; (c) whether to award payment of attorneys’ fees,
19 costs, and expenses to Class Counsel and in what amount; and (d) whether to award payment of a
20 service award to the Settlement Class Representatives and in what amount. The Court may
21 adjourn the Fairness Hearing without further notice to Class Members.

22 19. By no later than fourteen (14) days prior to the Objection Deadline, papers
23 supporting the Fee Award shall be filed with the Court and posted to the settlement website.

24 20. Papers in support of final approval of the Settlement Agreement shall be filed with
25 the Court no later than 14 days prior to the Objection Deadline.

26 Further Matters

27 21. In order to protect its jurisdiction to consider the fairness of the Settlement
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1 Agreement and to enter a final order and judgment having binding effect on all Settlement Class
2 Members, the Court hereby enjoins all members of the Settlement Class, and anyone who acts or
3 purports to act on their behalf, from pursuing all other proceedings in any state or federal court
4 that seeks to address rights or claims of any Released Party or Settlement Class Member relating
5 to, or arising out of, any of the Released Claims.

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

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

12 24. In the event that the Settlement Agreement is terminated pursuant to the provisions
13 of the Settlement Agreement, then certification of the Settlement Class will be vacated (if
14 applicable), and the Parties will be returned to their positions *status quo ante* with respect to the
15 Consumer Action as if the Settlement had not been entered into. In the event the Final Judgment
16 is not achieved: (a) any court orders preliminarily or finally approving the certification of any
17 Class contemplated by the Settlement and any other orders entered pursuant to the Settlement
18 Agreement shall be null, void, and vacated, and shall not be used or cited thereafter by any person
19 or entity in support of claims or defenses or in support of or in opposition to a class certification
20 motion; and (b) the Settlement Agreement will become null and void (with the exception
21 Paragraphs 99 and 100 therein) and shall have no force or effect, the Parties shall not be bound by
22 the Settlement, the Parties will be returned to their respective positions existing immediately
23 before the execution of the Settlement, and all of the Parties' respective pre-Settlement claims and
24 defenses will be preserved, and the fact of the Settlement, that Yapstone did not oppose the
25 certification of any class under the Settlement, or that the Court approved the certification of a
26 Settlement Class, shall not be used or cited thereafter by any person or entity, including in any
27 contested proceeding relating to the certification of any class.

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IT IS SO ORDERED.

Dated: March 2, 2017



HON. JEFFREY S. WHITE