

Supreme Court Rules in Favor of Facebook in Class Action Cy Pres Challenge

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On Monday, the Supreme Court ruled that Facebook's \$9.5 million settlement of privacy claims did not violate federal rules that require class action settlements to be "fair, reasonable and adequate."

The suit ([Marek v. Lane, 13-136](#)) involves Facebook's former use of its Beacon advertising program that tracked the activity of logged-in Facebook members and shared their purchases with their friends on Facebook. This resulted in a class action lawsuit alleging that Facebook violated federal and state privacy laws. The settlement requires \$6.5 million (of the \$9.5 million total settlement) to be paid in the form of *cy pres* relief to a foundation that would be formed to promote online privacy. Nothing would go to absent class members and plaintiffs' counsel will receive \$2.36 million in fees and expenses. The settlement was appealed, but the federal appeals court upheld the terms as a legitimate type of agreement given that the number of plaintiffs involved in the class action would make the payments so small they would be impractical. Instead the class members receive an indirect benefit, rather than a small sum of money.

The Supreme Court agreed with the lower court's decision, and while the ruling yesterday came without a dissent, Chief Justice John Roberts made his sentiments known. While *Marek* was not the right vehicle for addressing the issue because "*Marek's* challenge is focused on the particular features of the specific *cy pres* settlement at issue," another case, might "afford[] the Court an opportunity to address more fundamental concerns surrounding the use of [*cy pres*] remedies in class action litigation." Among his stated concerns: "when, if ever, such relief should be considered" and "how closely the goals of any enlisted organization must correspond to the interests of the class." The Chief Justice made clear that this issue is far from resolved given that "[*cy pres*] remedies ... are a growing feature of class action settlements." He concluded that "[i]n a suitable case, this Court may need to clarify the limits on the use of such remedies."

For those critics of the Ninth Circuit's holding in *Marek* and previously in *Dennis*, stay tuned. Undoubtedly, more to come on this issue.