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15 **UNITED STATES DISTRICT COURT**  
16 **NORTHERN DISTRICT OF CALIFORNIA**  
17 **OAKLAND DIVISION**

18 ALAN CLARIDGE, individually and on  
behalf of all others similarly situated,

19  
20 Plaintiff,

21 v.

22 ROCKYOU, INC., a Delaware corporation,

23 Defendant.  
24

) Case No. 09-CV-6032 - PJH  
)  
)  
)

) **STIPULATED ENTRY OF JUDGMENT OF**  
) **DISMISSAL WITH PREJUDICE AND**  
) **RELEASE**

) Judge: Honorable Phyllis J. Hamilton  
)  
)  
)

1           **WHEREAS**, on December 28, 2009, Plaintiff brought a putative class action (“Action”)  
2 against RockYou in the United States District Court for the Northern District of California  
3 (“Court”), which was designated case number C-09-6032. Plaintiff brought the action against  
4 RockYou for purportedly failing to secure and safeguard its users’ personally identifiable  
5 information.

6           **WHEREAS**, in his original Complaint, Plaintiff alleged causes of action for (1) violations of  
7 California’s Unfair Competition Law, codified at Business and Professions Code § 17200 et seq.,  
8 (2) violations of California’s Computer Crime Law, codified at Penal Code § 502, (3) violations of  
9 California Civil Code § 1798.80, (4) violations of California’s Consumer Legal Remedies Act,  
10 codified at Civil Code § 1750 et seq., (5) breach of contract, (6) breach of implied contracts,  
11 (7) breach of the implied covenant of good faith and fair dealing, (8) negligence, and (9) negligence  
12 per se. Plaintiff claimed federal subject matter jurisdiction existed pursuant to the Class Action  
13 Fairness Act of 2005. Plaintiff’s Complaint sought monetary damages and injunctive relief, among  
14 other relief.

15           **WHEREAS**, on June 10, 2010, RockYou moved to dismiss Plaintiff’s Complaint. In response  
16 to the motion to dismiss and pursuant to a stipulation of the Parties, on August 12, 2010, Plaintiff  
17 filed a First Amended Complaint. The First Amended Complaint deleted the claim asserting  
18 violations of California Civil Code § 1798.80, but included a claim for purported violations of the  
19 Stored Communications Act, codified at 18 U.S.C. § 2702.

20           **WHEREAS**, on September 19, 2010, RockYou moved to dismiss Plaintiff’s First Amended  
21 Complaint. On April 11, 2011, the Court issued an order granting the motion in part and denying in  
22 part RockYou’s motion, dismissing Plaintiff’s first, second, third, fourth and sixth causes of action,  
23 and the dismissal was with prejudice with respect to the second, third and fourth causes of action.  
24 The Court denied dismissal, however, with respect to Plaintiff’s fifth, seventh, eighth and ninth  
25 causes of action, and allowed Plaintiff an opportunity to replead his first and sixth causes of action.

26           **WHEREAS**, on May 11, 2011, Plaintiff filed a Second Amended Complaint. Plaintiff’s  
27 Second Amended Complaint asserted the same claims as his First Amended Complaint, except that  
28 Plaintiff withdrew the claim for breach of the implied covenant of good faith and fair dealing.

1           **WHEREAS**, RockYou answered the Second Amended Complaint on May 25, 2011, alleging,  
2 *inter alia*, that several of the causes of action were improperly asserted in light of the Court's Order  
3 dismissing them with prejudice, that it did not violate any of the claimed statutes or breach a contract  
4 or duty owed to Plaintiff, that Plaintiff was not harmed by the alleged conduct, and that it was  
5 protected by numerous affirmative defenses.

6           **WHEREAS**, the Parties have engaged in a series of settlement discussions, including during  
7 their Rule 26(f) conference on April 27, 2010, at an in-person meeting in San Francisco, California  
8 on March 5, 2010, and at a settlement conference before the Court, presided over by the Honorable  
9 Judge Richard G. Seeborg (then Magistrate Judge) on June 18, 2010.

10           **WHEREAS**, The Parties have investigated the facts and analyzed the relevant legal issues in  
11 regard to the claims and defenses asserted in the Action.

12           **WHEREAS**, RockYou denies any wrongdoing whatsoever, and it has denied and continues to  
13 deny that it committed, threatened, or attempted to commit, any of the wrongful acts or violations of  
14 law or duty that are alleged in the Action, and instead contends that it has acted properly. In  
15 addition, RockYou maintains that it has meritorious defenses to the claims alleged in the Action and  
16 was prepared to vigorously defend the Action. Nonetheless, taking into account the uncertainty and  
17 risks inherent in any litigation, RockYou has concluded that defense of the Action would be  
18 burdensome and expensive, and that it is desirable and beneficial to fully and finally settle and  
19 terminate the Action in the manner and upon the terms and conditions set forth in this Settlement.

20           **WHEREAS**, Plaintiff believes that the claims asserted in the Action have merit. Nonetheless,  
21 Plaintiff and Plaintiff's Counsel recognize and acknowledge the expense and length of continued  
22 prosecution of the Action against RockYou through trial and any subsequent appeals. Plaintiff and  
23 Plaintiff's Counsel have also taken into account the uncertain outcome and risks of any litigation,  
24 especially in complex actions, as well as the difficulties and delays inherent in such litigation.

25           **WHEREAS**, Plaintiff and Plaintiff's Counsel believe that it is desirable that the released  
26 claims be fully and finally compromised, settled, and resolved with prejudice, and barred pursuant to  
27 this Settlement.  
28

1           **WHEREAS**, the Parties (through counsel) have negotiated the terms of the Stipulation in good  
2 faith and at arm's length to avoid the burden, expense and distraction of potentially protracted and  
3 complex litigation.

4           **THEREFORE, IT IS HEREBY STIPULATED AND AGREED** by and between the  
5 Parties herein, through their respective counsel of record, pursuant to the Parties' Settlement  
6 Agreement and Release, and subject to express approval of the Court, as follows:

7           1.       In consideration for the settlement of the Action, the releases stated herein, and the  
8 dismissal of this Action, RockYou hereby knowingly and voluntarily consents to an injunction of a  
9 limited term of thirty-six (36) months requiring it to undergo two audits of its information systems  
10 security policies with respect to the maintenance of consumer records to be conducted by an  
11 independent third-party selected by Defendant. To the extent that such audits reveal credible  
12 security threats, Defendant agrees to correct deficiencies in its policies.

13           2.       RockYou's shall be bound by the injunction described in Section 2.1 above, so long  
14 as it is engaged in the business of collecting and maintaining consumer records as alleged in the  
15 Action.

16           3.       RockYou agrees to pay Plaintiff \$2,000 in recognition of his time and efforts in this  
17 pursuing this Action and in exchange for his general release of Defendant RockYou.

18           4.       RockYou agrees to pay to Plaintiff's Counsel reasonable attorneys' fees and expenses  
19 accrued in pursuit of this Action, in the total amount of \$290,000, as set forth in the Parties'  
20 Settlement Agreement and Release.

21           5.       RockYou represents and warrants that it is financially unable to provide the monetary  
22 relief sought by Plaintiff in the Action on behalf of the Proposed Class.

23           6.       This Action is hereby dismissed with prejudice in its entirety as to the named Plaintiff  
24 and with prejudice as to the Proposed Class solely with respect to any claims for injunctive relief or  
25 declaratory relief based on the facts alleged in the Second Amended Complaint.

26           7.       Excluding all the terms, conditions, rights, and obligations created hereby or  
27 contained herein, and in consideration of the Settlement Relief described in Section II above, upon  
28 the Final Settlement Date (as that term is defined in the Parties' Settlement Agreement and Release,

1 Plaintiff Alan Claridge, and any spouse, parent, child, heir, associate, co-owner, attorney, agent,  
 2 administrator, devisee, predecessor, successor, assign, legatee, personal representative of any kind,  
 3 partner, director, employee, or affiliate of his, release and forever discharge RockYou and any and  
 4 all of its present or past predecessors, successors, assigns, direct or indirect parents, subsidiaries,  
 5 associates, affiliates, employees, agents, consultants, independent contractors, insurers, directors,  
 6 managing directors, officers, partners, attorneys, accountants, financial and other advisors,  
 7 investment bankers, underwriters, shareholders, lenders, auditors, investment advisors, legal  
 8 representatives, successors in interest, assigns and Persons, firms, trusts, corporations, officers,  
 9 directors, and any other individuals or entities in which RockYou has a controlling interest, to which  
 10 RockYou is related, or with which it is or are affiliated from any and all manner of action, causes of  
 11 action, claims, demands, rights, suits, obligations, debts, contracts, agreements, promises, liabilities,  
 12 damages (including, but not limited to punitive, exemplary or multiplied damages), charges,  
 13 penalties, losses, costs, expenses, and attorneys' fees, of any nature whatsoever, known or unknown,  
 14 in law or equity (including, but not limited to, actions seeking non-economic or injunctive relief),  
 15 fixed or contingent, accrued or unaccrued, direct, derivative, individual, representative, or in any  
 16 other capacity, and, as the named representative and therefore on behalf of the Proposed Class, all  
 17 claims brought by such Proposed Class solely with respect to any claims for injunctive relief or  
 18 declaratory relief based on the facts alleged in the Second Amended Complaint.

19 8. In addition, Plaintiff, and each of Plaintiff's spouses, parents, children, heirs,  
 20 associates, co-owners, attorneys, agents, administrators, devisees, predecessors, successors, assigns,  
 21 legatees, personal representative of any kind, shareholders, partners, directors, employees, or  
 22 affiliates, expressly waive and relinquish, to the fullest extent permitted by law, the provisions, rights  
 23 and benefits of Section 1542 of the California Civil Code, or any other similar provision under  
 24 federal or state law, which provides:

25 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH  
 26 THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS  
 27 OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE,  
 28 WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY  
 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

1 Plaintiff fully understands that the facts on which this Settlement Agreement is executed may be  
2 different from the facts now believed by Plaintiff and his Counsel to be true and expressly accepts  
3 and assumes the risk of this possible difference in facts and agrees that this Settlement Agreement  
4 remains effective despite any difference in facts. Further, Plaintiff agrees that this waiver is an  
5 essential and material term of this release and the Settlement that underlies it and that without such  
6 waiver the Settlement would not have been accepted.

7 9. Having obtained the express permission and consent of their respective clients, the  
8 undersigned counsel-of-record hereby consent to the terms and conditions set forth above by signing  
9 below.

10 Dated: November 14, 2011

EDELSON MCGUIRE, LLC

11  
12  
13 By: /s/ Christopher L. Dore  
14 Christopher L. Dore  
Attorneys for Plaintiff

15 Dated: November 14, 2011

COOLEY LLP

16  
17 By: /s/ Michael G. Rhodes  
18 Michael G. Rhodes  
19 Whitty Somvichian  
20 Attorneys for Defendant

21  
22 PURSUANT TO STIPULATION, IT IS SO ORDERED:

23 Dated: \_\_\_\_\_, 2011

24  
25 HONORABLE PHYLLIS J. HAMILTON  
26 UNITED STATES DISTRICT JUDGE