

BURSOR & FISHER, P.A.

Frederick J. Klorczyk III (State Bar. No. 320783)

888 Seventh Avenue

New York, NY 10019

Telephone: (646) 837-7150

Facsimile: (212) 989-9163

E-Mail: fklorczyk@bursor.com

BURSOR & FISHER, P.A.

Neal J. Deckant (State Bar No. 322946)

Julia K. Venditti (State Bar No. 332688)

1990 North California Boulevard, Suite 940

Walnut Creek, CA 94596

Telephone: (925) 300-4455

Facsimile: (925) 407-2700

E-Mail: ndeckant@bursor.com

jvenditti@bursor.com

Attorneys for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

DEBORAH JORDAN, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

WP COMPANY LLC, d/b/a THE
WASHINGTON POST,

Defendant.

Case No. 3:20-cv-05218-WHO

**[PROPOSED] FINAL APPROVAL
ORDER AND JUDGMENT**

Judge: Hon. William H. Orrick

1 On July 8, 2021, this Court granted preliminary approval of the proposed class action
2 settlement agreement between the parties (the “Settlement Agreement” or “Settlement”).

3 The Court also provisionally certified a Settlement Class for settlement purposes, approved
4 the procedure for giving notice and forms of Notice, and set a final approval hearing to take place
5 on November 17, 2021, at 2:00 p.m. in Courtroom 2, 17th Floor, at the San Francisco United States
6 Courthouse, 450 Golden Gate Avenue, San Francisco, California. The Settlement Class is defined
7 as: all Persons who, from July 29, 2016, to and through April 1, 2021, enrolled in any of
8 Defendant’s digital subscription offerings using a California billing address and who, during that
9 time period, were charged and paid one or more automatic renewal fee(s) in connection with such
10 subscription. Excluded from this definition are the Released Parties. Settlement Class Members
11 who exclude themselves from the Settlement, pursuant to the procedures set forth in Paragraph 4.5
12 of the Settlement, shall no longer thereafter be Settlement Class Members and shall not be bound
13 by the Settlement and shall not be eligible to make a claim for any benefit under the terms of the
14 Settlement.

15 On November 17, 2021, the Court held a duly noticed final approval hearing to consider:
16 (1) whether the terms and conditions of the Settlement are fair, reasonable and adequate; (2)
17 whether a judgment should be entered dismissing the complaint on the merits and with prejudice in
18 favor of Defendant and against all persons or entities who are Settlement Class members herein
19 who have not requested exclusion from the Settlement Class; and (3) whether and in what amount
20 to award attorneys’ fees, costs and expenses to Class Counsel and whether and in what amount to
21 make an incentive award to Plaintiff Deborah Jordan.

22 The Court, having considered all matters submitted to it at the hearing and otherwise, and it
23 appearing that the Class Notice substantially in the form approved by the Court was given in the
24 manner that the Court ordered to persons who purchased the WaPo Subscriptions at issue, as
25 ordered by the Court, and having considered and determined that the proposed settlement of the
26 claims of the Settlement Class Members against Defendant, as well as the release of Defendant and
27 the Released Parties, and the awards of attorneys’ fees, costs, and expenses and incentive award
28 requested, are fair, reasonable and adequate, **HEREBY ORDERS, DECREES, AND**

1 **ADJUDGES** as follows:

2 1. The definitions in the Settlement Agreement and the Court’s Preliminary Approval
3 Order are hereby incorporated herein as though fully set forth in this Order, and all other terms and
4 phrases in this Order shall have the same meaning as ascribed to them in the Settlement Agreement
5 and in the Court’s Preliminary Approval Order, and/or in any Order of this Court prior to the entry
6 of final Judgment.

7 2. The Court finds that the prerequisites for a settlement class under Federal Rules of
8 Civil Procedure (“Fed. R. Civ. P.”) 23(a) and (b)(3) have been satisfied, for purposes of settlement
9 only, in that: (a) the number of Settlement Class Members is so numerous that joinder of all
10 members thereof is impracticable; (b) there are questions of law and fact common to the Settlement
11 Class; (c) the claims of the Class Representative are typical of the claims of the Settlement Class
12 she seeks to represent; (d) the Class Representative has and will fairly and adequately represent the
13 interests of the Settlement Class; (e) the questions of law and fact common to the Settlement Class
14 Members predominate over any questions affecting any individual Settlement Class Member; and
15 (f) a class action is superior to the other available methods for the fair and efficient adjudication of
16 the controversy.

17 3. The Court finds that the requirements of Rule 23(e) of the Federal Rule of Civil
18 Procedure and other laws and rules applicable to final settlement approval of class actions have
19 been satisfied, and the Court approves the settlement of this Action as memorialized in the
20 Settlement Agreement as being fair, just reasonable and adequate to the Settlement Class and its
21 members. The Court further finds that the Settlement Agreement substantially fulfills the purposes
22 and objectives of the class action, and provides substantial relief to the Settlement Class without
23 the risks, burdens, costs or delays associated with continued litigation, trial and/or appeal. The
24 Settlement is not a finding or admission of liability by the Defendant or any other person, nor a
25 finding of the validity of any claims asserted in the Action or of any wrongdoing or any violation
26 of law.

27 4. Pursuant to Fed. R. Civ. P. 23, this Court hereby finally certifies this action, for
28 purposes of settlement, a class action on behalf of all Persons who, from July 29, 2016, to and

1 through April 1, 2021, enrolled in any of Defendant's digital subscription offerings using a
2 California billing address and who, during that time period, were charged and paid one or more
3 automatic renewal fee(s) in connection with such subscription. Excluded from this definition are
4 the Released Parties. Settlement Class Members who exclude themselves from the Settlement,
5 pursuant to the procedures set forth in Paragraph 4.5 of the Settlement Agreement, shall no longer
6 thereafter be Settlement Class Members and shall not be bound by the Settlement Agreement and
7 shall not be eligible to make a claim for any benefit under the terms of this Settlement Agreement.

8 5. The Court appoints Frederick J. Klorczyk III of Bursor & Fisher, P.A., as Class
9 Counsel for the Settlement Class. The Court designates Plaintiff Deborah Jordan as the Class
10 Representative.

11 6. Notice of the pendency of this action as a class action and of the proposed
12 settlement was given to Settlement Class Members in a manner reasonably calculated to provide
13 the best notice practicable under the circumstances. The form and method of notifying the
14 Settlement Class of the pendency of the Action as a class action and of the terms and conditions of
15 the proposed Settlement met the requirements of Fed. R. Civ. P. 23, due process, and any other
16 applicable law, and constituted due and sufficient notice to all persons and entities entitled thereto.
17 In addition, the Court finds that Defendant fully satisfied any obligation to provide Notice of the
18 proposed Settlement Agreement to the public officials designated under the Class Action Fairness
19 Act, 28 U.S.C. § 1715, to receive such notice, as set forth in the Defendant's Notice of Compliance
20 with 28 U.S.C. § 1715.

21 7. The Court has considered and finds Class Counsel and the Class Representative
22 have adequately represented the Class. Plaintiff, by and through her counsel, has investigated the
23 pertinent facts and law, and has evaluated the risks associated with continued litigation, class
24 certification, trial, and/or appeal. The Court finds that the Settlement Agreement was reached in
25 the absence of collusion, is the product of informed, good-faith, arms-length negotiations between
26 the parties and their capable and experienced counsel.

27 8. The Court finds that the Settlement is effective in appropriately distributing relief to
28 the Settlement Class in light of the claims and defenses asserted, that the method of processing

1 Settlement Class Member claims is reasonable and appropriate, and that the Settlement Agreement
2 treats all Settlement Class Members equitably relative to each other.

3 9. The Court has evaluated this overall reaction of the Class to the Settlement, and
4 finds that the overall acceptance of the Settlement Agreement by Settlement Class Members
5 supports the Court's conclusion that the Settlement Agreement is in all respects fair, reasonable,
6 adequate, and in the best interests of the Class.

7 10. The Parties are directed to consummate the Settlement Agreement in accordance
8 with its terms and conditions.

9 11. Defendant shall implement (if it has not done so already) the Prospective Relief
10 described in Paragraph 2.3 of the Settlement Agreement within a reasonably practicable time from
11 the date of this order.

12 12. JND Legal Administration ("JND") is finally appointed to continue to serve as the
13 Claims Administrator as provided in the Settlement Agreement. The Claims Administrator is
14 directed to process all Authorized Claims in accordance with the Settlement Agreement. Class
15 Counsel and Counsel for Defendant are hereby authorized to employ all reasonable procedures in
16 connection with administration of the Settlement Agreement that are not materially inconsistent
17 with this Order or the Settlement Agreement.

18 13. The Claims Administrator shall administer the Escrow Account, which is a
19 Qualified Settlement Fund within the meaning of Treasury Regulation § 1.468B-1. The Claims
20 Administrator, as administrator of the fund within the meaning of Treasury Regulation § 1.468B-
21 2(k)(3), shall be solely responsible for filing or causing to be filed all informational and other tax
22 returns as may be necessary or appropriate (including, without limitation, the returns described in
23 Treasury Regulation § 1.468B-2(k)) for the Escrow Account. The Claims Administrator shall also
24 be responsible for causing payment to be made from the Escrow Account of any Taxes and Tax
25 Expenses owed. None of the Releasees, Plaintiff, Class Counsel, or Counsel for Defendant shall
26 have any liability or responsibility for any such Taxes or Tax Expenses, or any required filings
27 regarding same.

28 14. There shall be no recourse to any Defendant, Releasee, Released Party or their

1 counsel, or to the Class Representative or Class Counsel, or to the Claims Administrator or to this
2 Court, for any determination made by the Claims Administrator pursuant to its responsibilities
3 under the Settlement Agreement. In addition, notwithstanding anything else in this Order, if the
4 Claims Administrator or any Party has reason to believe that a false or fraudulent Claim has been
5 submitted in this Settlement, or that any Claim has been submitted under false pretenses, the
6 Claims Administrator may reject the Claim.

7 15. The allowance or disallowance by the Court of any Fee Award or Incentive Award
8 have been considered by the Court separately from the Court's consideration of the fairness,
9 reasonableness and adequacy of the Settlement. Any Order or proceeding related to the application
10 for an award of fees, costs and expenses, or any appeal from any Fee Award or Incentive Award or
11 other order relating thereto, shall not operate to terminate or cancel the Settlement Agreement, nor
12 affect or delay the finality of this Final Order and Judgment.

13 16. Pursuant to Fed. R. Civ. P. 23(h), the Court hereby awards Class Counsel attorneys'
14 fees, costs, and expenses in the amount of \$ _____. The Court also orders payment of
15 an incentive award(s) in the amount(s) of \$ _____ to Plaintiff Deborah Jordan. These amounts
16 are to be paid in the time and manner described in the Settlement Agreement.

17 17. The Action is hereby dismissed with prejudice and without costs as against
18 Defendant and the Released Parties.

19 18. Class Representative and all Settlement Class Members (except any such person
20 who has filed a proper and timely request for exclusion) and all persons acting on behalf of or in
21 concert with any of the above, are hereby permanently barred and enjoined from instituting,
22 commencing or prosecuting, either directly or in any other capacity, any and all of the Released
23 Claims against any of the Released Parties. The Court finds that issuance of the permanent
24 injunction described in this paragraph is necessary and appropriate in aid of the Court's jurisdiction
25 over this Action and to protect and effectuate this Order.

26 19. Effective as of the Final Settlement Approval Date, each and all of the Settlement
27 Class Members (except any such person who has filed a proper and timely request for exclusion)
28 shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally, and

1 forever released, relinquished, and discharged, and shall be forever barred from asserting,
2 instituting, or maintaining against any or all of the Released Parties, any and all causes of action or
3 claims for relief, whether in law or equity, including but not limited to injunctive relief, actual
4 damages, nominal damages, statutory damages, punitive damages, exemplary or multiplied
5 damages, restitution, disgorgement, expenses, attorneys' fees and costs, and/or any other form of
6 consideration whatsoever (including Unknown Claims), whether in law or in equity, accrued or un-
7 accrued, direct, individual or representative, of every nature and description whatsoever, that were
8 brought or could have been brought in the Action relating to any and all Releasing Parties, any
9 WaPo Subscription associated with any of them, or that in any way relate to or arise out of
10 Defendant's automatic renewal and/or continuous service programs in California from July 29,
11 2016, to and through April 1, 2021, including but not limited to any of the facts, transactions,
12 events, matters, occurrences, acts, disclosures, statements, representations, omissions or failures to
13 act related thereto. Plaintiff, the Settlement Class, and the Releasing Parties each individually
14 covenant not to bring any Released Claim and expressly agree that this Release will be, and may be
15 raised as, a complete defense to and will preclude any action or proceeding encompassed by the
16 release(s) contained herein in respect to any WaPo Subscription associated with a Class Member.

17 20. Neither the Settlement Agreement, nor any of its terms and provisions, nor any of
18 the negotiations or proceedings connected with it, nor any of the documents or statements referred
19 to therein shall be:

20 (a) offered by any person or received against Defendant as evidence or
21 construed as or deemed to be evidence of any presumption, concession, or admission by Defendant
22 of the truth of the facts alleged by the Class Representative or any Settlement Class Member or the
23 validity of any claim that has been or could have been asserted in the Action or in any litigation, or
24 other judicial or administrative proceeding, or the deficiency of any defense that has been or could
25 have been asserted in the Action or in any litigation, or of any liability, negligence, fault or
26 wrongdoing of Defendant;

27 (b) offered by any person or received against Defendant as evidence of a
28 presumption, concession or admission of any fault, misrepresentation or omission with respect to

1 any statement or written document approved or made by Defendant or any other wrongdoing by
2 Defendant;

3 (c) offered by any person or received against Defendant as evidence of a
4 presumption, concession, or admission with respect to any liability, negligence, fault, or
5 wrongdoing, or in any way referred to for any other reason against any of the settling parties, in
6 any civil, criminal, or administrative action or proceeding; provided, however, that nothing
7 contained in this paragraph shall prevent the Settlement Agreement from being used, offered, or
8 received in evidence in any proceeding to approve, enforce, or otherwise effectuate the Settlement
9 or the Settlement Approval Order and Final Judgment, or in which the reasonableness, fairness, or
10 good faith of the parties in participating in the Settlement (or any agreement or order relating
11 thereto) is an issue, or to enforce or effectuate provisions of the Settlement, the Settlement
12 Approval Order and Final Judgment, the releases as to the Released Parties.

13 21. Claims documents in this case, and all materials and data held by the Claims
14 Administrator regarding the Settlement Class, including the Class List, shall be strictly confidential
15 and not subject to publication or disclosure, and shall not be used for any other purposes beyond
16 providing notice to the Settlement Class and assisting with the determination of valid claims. No
17 person other than the Parties and their counsel, the Claims Administrator, and the Court shall be
18 permitted to obtain or review any Claim Form, or any decision of the Claims Administrator with
19 respect to accepting or rejecting any Claim, except as provided for herein or upon Court Order for
20 good cause shown.

21 22. This Settlement Approval Order and Final Judgment constitutes a judgment within
22 the meaning and for purposes of Rule 54 of the Federal Rules of Civil Procedure. Without
23 affecting the finality of the Settlement Approval Order and Final Judgment in any way, this Court
24 hereby retains continuing jurisdiction over: (a) the disposition of the settlement benefits; (b) the
25 settling parties for purposes of construing, enforcing and administering the Settlement Agreement;
26 and (c) enforcement of the Stipulation and Order Regarding Undertaking Re: Attorneys' Fees and
27 Costs.

28 23. Without further order of the Court, the settling parties may agree to reasonably

1 necessary extensions of time to carry out any of the provisions of the Settlement Agreement.

2 24. In the event that the Final Settlement Approval Date does not occur, this Settlement
3 Approval Order and Final Judgment shall automatically be rendered null and void and shall be
4 vacated and, in such event, all orders entered in connection herewith, except the Stipulation and
5 Order Regarding Undertaking Re: Attorneys' Fees and Costs, shall be null and void.

6
7 IT IS SO ORDERED, this ____ day of _____, 2021.

8
9 _____
10 Hon. Judge William H. Orrick
11 United States District Court Judge,
12 Northern District of California
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28