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David H. Yamasaki

Chief Executive Officer/Clerk

Superior Court of CA, County of Santa Clara

Case #1-11-CV-193767 Filing #G-81158

By R. Walker, Deputy

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SANTA CLARA

PETER MACKINNON, JR, an individual, on  
behalf of himself, the general public and those  
similarly situated,

Plaintiff,

v.

IMVU, INC., and DOES 1 THROUGH 50

Defendants.

CASE NO: 111 CV 193767

~~[PROPOSED]~~ ORDER GRANTING FINAL  
APPROVAL OF CLASS ACTION SETTLE-  
MENT AND JUDGMENT

DATE: February 19, 2016

TIME: 9:00 a.m.

CTRM: 1

JUDGE: Hon. Peter H. Kirwan

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**RECITALS**

Plaintiff Peter MacKinnon, Jr. (“Class Representative”) and Defendant IMVU, Inc. (“Defendant”) have moved the Court for final approval of a proposed class action settlement and an award of attorneys’ fees, costs and an incentive payment, the terms and conditions of which are set forth in the Settlement Agreement filed with the Court on October 7, 2015 (“Settlement Agreement”).

The facts and procedural history of this case, as well as the terms of the settlement and the process of notifying class members, are more fully explained in the Court’s Order Granting Preliminary Approval of Class Action Settlement, which is incorporated herein by reference.

The parties and the claim administrator have submitted evidence, which the Court accepts, showing the following. Notice of the settlement was sent, both by email and by “direct message” through the IMVU application, to 122,688 potential Settlement Class Members. Notice was also posted on the IMVU home page and various other webpages maintained by IMVU. In addition, approximately 311,138 banner advertisement impressions, purchased using Google Adwords for searches involving terms such as “IMVU audio,” “IMVU playback,” and “IMVU settlement,” were displayed on a variety of websites, and 9,611,372 advertisement impressions were displayed on Facebook. All of these notices linked to the Settlement Website, which contains a detailed class notice, including the procedures to opt-out and object, as well as a copy of the Settlement Agreement and motion papers filed in connection with the settlement.

The parties now agree that, based on review of IMVU’s records, there are 119,417 persons who are members of the Settlement Class.

Pursuant to the Settlement Agreement, settlement benefits are to be provided automatically to Settlement Class Members who did not opt out. A total of 29 persons (0.03% of the class) filed timely requests to opt out of the Settlement Class.<sup>1</sup>

One person, Sarah Wright, (0.0008%) filed an objection to the settlement. Ms. Wright states that she has been an IMVU member since December 3, 2007 and provides her member

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<sup>1</sup> Although 31 persons are listed on Exhibit A, lines 17, 18 and 19 appear to be the identical person. Thus the total number of opt outs is 29.

1 number. She does not, however, provide any “documents or testimony sufficient to establish [her]  
2 membership in the settlement class,” as required by the class notice, i.e., she does not declare or  
3 provide evidence that “(1) after September 21, 2008 and before December 1, 2010, [she] used  
4 IMVU Credits to purchase from the IMVU virtual catalog at least one audio product whose play-  
5 back length was greater than twenty seconds, (2) subsequently logged into the IMVU service at  
6 least once after January 31, 2011, (3) as of April 20, 2015, had not been terminated by IMVU for  
7 violations of IMVU terms of service, and (4) as of the date of the Settlement Agreement had their  
8 country of residence setting in the IMVU Application set as the United States.”

9 Ms. Wright states: “I OBJECT to the payout for lawyers fee and to MacKinnon on the  
10 grounds that it is reasonable to say that there is more than enough information in the news and  
11 online about copyright laws, and if anyone decide [sic] to go into any business it is your responsi-  
12 bility to learn how to be in compliance of [sic] all laws, ignorance of the law is no excuse. IMVU  
13 was correct in cutting down the ‘Sound Tracks’ to 20 seconds to comply with the laws and they  
14 did refund buyers of the tracks.” Ms. Wright goes on to state, however, that “The fact that IMVU  
15 has agreed to make changes and clarification in their ‘Terms of Service’ and refunded the buyers  
16 seems reasonable as a settlement. However, [sic] it would be please me to see IMVU come to the  
17 table easier on issues that are a concern to users and creators in the future, rather then (sic) in  
18 court.”

### 19 LEGAL STANDARD

20 In order “[t]o prevent collusion or unfairness to the Class, the settlement or disapproval of  
21 a class action requires court approval.” *Malibu Outrigger Board of Governors v. Superior Court*  
22 (1980) 103 Cal.App.3d 572, 578-79. The standard for granting approval is whether the proposed  
23 class action settlement as a whole is fair, adequate and reasonable. *See Dunk v. Ford Motor Co.*  
24 (1996) 48 Cal.App.4<sup>th</sup> 1794, 1801 (“*Dunk*”); *see also Wershba v. Apple Computer, Inc.* (2001) 91  
25 Cal.App.4<sup>th</sup> 224, 234; *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85  
26 Cal.App.4<sup>th</sup> 1135, 1145. There is, however, a “strong judicial policy that favors settlement,” par-  
27 ticularly (like here) “where complex class action litigation is concerned.” *Class Plaintiffs v. City*  
28 *of Seattle* (9<sup>th</sup> Cir. 1992) 955 F.2d 1268, 2176 ; 4 Herbert B. Newberg & Alba Conte, *Newberg on*

1 *Class Actions* (4<sup>th</sup> ed. 2002) § 11:41 (“*Newberg*”) (citations omitted.)

2 This Court has broad discretion in determining whether a proposed class action settlement  
3 is fair. *See Rebney v. Wells Fargo Bank* (1990) 220 Cal.App. 3d 1117, 1138. As the Ninth Circuit  
4 has explained, “[t]he district court’s decision to approve or reject a settlement is committed to the  
5 sound discretion of the trial judge because he is exposed to the litigants, and their strategies, posi-  
6 tions; and proof.” *In re Mego Financial Corp. v. Securities Litigation* (9th Cir. 2000) 213 F. 3d  
7 454, 458; *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026.<sup>2</sup>

8 In exercising this discretion, the Court must generally give “[d]ue regard...to what is oth-  
9 erwise a private consensual agreement between the parties.” *Dunk*, Cal.App.4<sup>th</sup> at 1801. Indeed,  
10 the Court’s inquiry “must be limited to the extent necessary to reach a reasonable judgment that  
11 the agreement is not the product of fraud or overreaching by, or collusion between, the negotiat-  
12 ing parties, and that the settlement, taken as a whole, is fair, reasonable, and adequate to all con-  
13 cerned.” *Id.* (citations omitted.)

14 The Court must “explore[] all the relevant factors” bearing on approval of a class action  
15 settlement. *See Hanlon v. Chrysler Corp.*, 150 F.3d at 1026. In California, the “relevant factors”  
16 include the strength of plaintiff’s case; the risk, expense, complexity, and likely duration of fur-  
17 ther litigation; the risk of maintaining class action status through trial; the amount offered in set-  
18 tlement; the extent of discovery completed and the state of the proceedings; the experience and  
19 view of counsel; the presence of a governmental participant; and the reaction of the class mem-  
20 bers to the proposed settlement. *See Wershba*, 91 Cal.App.4<sup>th</sup> at 244-45. This list of factors is not,  
21 however, exclusive. Rather, the trial court is free to engage in a balancing and weighing of fac-  
22 tors, depending on the circumstances of each case. *Id.* at 245. The Court, however, is not to en-  
23 gage in a mini-trial on the merits. As Judge Friendly instructed:

24 [T]he role of the court in passing upon the propriety of the settlement of a...class action  
25 is a delicate one....[W]e recognize that since ‘[t]he very purpose of compromise is to  
26 avoid the trial of sharply disputed issues and to dispense with wasteful litigation, the court

27 <sup>2</sup> To the extent that they are not inconsistent with California jurisprudence, California courts are  
28 advised to look for guidance to Rule 23 of the Federal Rules of Civil Procedure and federal cases  
applying Rule 23. *See Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821; *see also Green v.*  
*Obledo* (1980) 29 Cal.3d 126, 145-46; *Dunk, supra*, 48 Cal.App.4<sup>th</sup> at 1801 fn. 7.

1 must not turn the settlement hearing into a trial or a rehearsal of the trial.’ Rather, in the  
2 words of the Supreme Court, . . . it must reach an ‘intelligent and objective opinion of the  
3 probabilities of ultimate success should the claim be litigated’ and ‘form an educated es-  
4 timate of the complexity, expense, and likely duration of such litigation. . . . [I]n any case  
5 there is a range of reasonableness with respect to a settlement—a range which recognizes  
6 the uncertainties of the law and fact in a particular case and the concomitant risks and  
7 costs necessarily inherent in taking any litigation to completion—and the judge will not be  
8 reversed if the appellate court concludes that the settlement lies within that range.

9 *Newman v. Stein* (2d Cir. 1972) 464 F.2d 689, 691-93, *cert denied sub nom, Benson v. Newman*  
10 (1972) 409 U.S. 2039; *see also Dunk*, 48 Cal.App.4<sup>th</sup> at 1801, *citing Officers for Justice v. Civil*  
11 *Service Comm’n* (9<sup>th</sup> Cir. 1982) 688 F.2d 615, 625 (“ultimately, the court’s determination in noth-  
12 ing more than ‘an amalgam of delicate balancing, gross approximation and rough justice.’”).

13 There is a presumption that a proposed settlement is fair and reasonable when it is the re-  
14 sult of arm’s-length negotiations, there has been investigation and discovery that are sufficient to  
15 permit counsel and the court to act intelligently, and counsel are experienced in similar litigation.  
16 *See Dunk v. Ford Motor Company* (1996) 48 Cal. App. 4th 1794, 1800-01; 2 Herbert Newberg &  
17 Alba Conte, *Newberg on Class Actions* §11.41 at 11-88 (3d ed. 1992).

#### 18 FINDINGS AND CONCLUSIONS

19 Having considered all matters submitted to it at the hearing on the motion and otherwise,  
20 including the complete record of this action, and good cause appearing therefore, the Court  
21 hereby finds and concludes as follows:

- 22 1. The capitalized terms used in this Final Approval Order and Judgment shall have the  
23 same meaning as defined in the Settlement Agreement except as may otherwise be ordered.
- 24 2. The Court has jurisdiction over this case and over all claims raised therein and all Par-  
25 ties thereto.
- 26 3. The Court finds that the prerequisites of section 382 of the Code of Civil Procedure  
27 and section 1781 of the Civil Code have been satisfied for certification of the Settlement Class for  
28 settlement purposes because: Settlement Class Members are ascertainable and are so numerous  
that joinder of all members is impracticable; there are questions of law and fact common to the  
Settlement Class; the claims and defenses of the Class Representative are typical of the claims  
and defenses of the Settlement Class they represent; the Class Representative has fairly and ade-

1 quately protected the interests of the Settlement Class with regard to the claims of the Settlement  
2 Class he represents; common questions of law and fact predominate over questions affecting only  
3 individual Settlement Class Members, rendering the Settlement Class sufficiently cohesive to  
4 warrant a class settlement; and the certification of the Settlement Class is superior to individual  
5 litigation and/or settlement as a method for the fair and efficient resolution of this matter.

6 4. For purposes of the Settlement and this Final Approval Order and Judgment, the  
7 Court hereby finally certifies the following Settlement Class: All persons (other than Excluded  
8 Persons) who (1) after September 21, 2008 and before December 1, 2010, used IMVU Credits to  
9 purchase from the IMVU virtual catalog at least one audio product whose playback length was  
10 greater than twenty seconds, (2) subsequently logged into the IMVU service at least once after  
11 January 31, 2011, (3) as of April 20, 2015, had not been terminated by IMVU for violations of  
12 IMVU terms of service, and (4) as of the date of the Settlement Agreement had their country of  
13 residence setting in the IMVU Application set as the United States. "Excluded Persons" are (1)  
14 the Honorable Judges Peter H. Kirwan, James P. Kleinberg, and Patricia J. Hamilton, (2) Randall  
15 W. Wulff; (3) any member of their immediate families; (4) any government entity; (5) IMVU; (6)  
16 any entity in which IMVU has a controlling interest; (7) any of IMVU's subsidiaries, parents, af-  
17 filiates, and officers, directors, employees, legal representatives, heirs, successors, or assigns; and  
18 (8) all persons who timely opted out of the Settlement Class, whose names are provided in Ex-  
19 hibit A.

20 5. For the purpose of this Settlement, the Court hereby finally certifies Plaintiff Peter  
21 MacKinnon, Jr., as Class Representative, and Gutride Safier LLP as Class Counsel.

22 6. The Parties complied in all material respects with the Notice Plan set forth in the Set-  
23 tlement Agreement. The Court finds that the Notice Plan set forth in the Settlement Agreement,  
24 and effectuated pursuant to the Preliminary Approval Order constituted the best notice practicable  
25 under the circumstances and constituted due and sufficient notice to the Settlement Class of the  
26 pendency of the Litigation; the existence and terms of the Settlement Agreement; their rights to  
27 make claims, opt out, or object; and the matters to be decided at the Final Approval Hearing. Fur-  
28 ther, the Notice Plan satisfied the requirements of the United States Constitution, Civil Code sec-

1 tion 1781, Rule of Court 3.769, and any other applicable law.

2 7. The Court has determined that full opportunity has been given to the members of the  
3 Settlement Class to opt out of the Settlement, object to the terms of the Settlement or to Class  
4 Counsel's request for attorneys' fees and expenses and incentive awards, and otherwise partici-  
5 pate in the Final Approval Hearing held on February 19, 2016. The Court has considered all  
6 submissions and arguments made at the final approval hearing provided by Class Members ob-  
7 jecting to the Settlement as well as the Parties' responses to those objections, and has determined,  
8 for all the reasons set forth in the Parties' responses, that none of the objections have any merit or  
9 warrant disapproval of the Settlement Agreement. All such objections to the Settlement are over-  
10 ruled.

11 8. With respect to the sole objection filed, that of Ms. Wright, the Court finds that Ms.  
12 Wright has failed to establish that she is a class member as required by the class notice and the  
13 order of preliminary approval and therefore lacks standing to object to the settlement. *See, e.g., In*  
14 *re Hydroxycut Mktg. & Sales Practices Litig.*, 2013 WL 5275618, at \*2 (S.D. Cal. Sept. 17, 2013)  
15 (striking objection because objector had not "carried his burden of proving standing as a class  
16 member"); *In re Korean Air Lines Co., Ltd. Antitrust Litig.*, No. CV 07-05107 SJO AGRX, 2013  
17 WL 7985367, at \*2 (C.D. Cal. Dec. 23, 2013) (finding objectors lack standing for failure to show  
18 class membership); *Kent v. Hewlett-Packard Co.*, 2011 U.S. Dist. LEXIS 106825 \*7 (N.D. Cal.  
19 Sept. 20, 2011) ("Because they are not members of the class, the Ziegenfelders lack standing to  
20 object."); *San Francisco NAACP v. San Francisco Unified School Dist.*, 59 F. Supp. 2d 1021,  
21 1032 (N.D. Cal. 1999) ("nonclass members have no standing to object to the settlement of a class  
22 action"); *Tarlecki v. Bebe Stores, Inc.*, 2009 U.S. Dist. LEXIS 102531 (N.D. Cal. Nov. 3, 2009)  
23 ("Since she is not a class member, she has no standing to object to the settlement."); *Glass v. UBS*  
24 *Fin. Servs., Inc.*, 2007 U.S. Dist. LEXIS 8476, 2007 WL 221862, at \*8 (N.D. Cal. Jan. 26, 2007)  
25 (same); *see also Feder v. Elec. Data Sys. Corp.*, 248 Fed. Appx. 579 \*2 (5th Cir. 2007) (objectors  
26 have burden of proving standing; "unsupported assertions of class membership" do not suffice).

27 9. Further, Ms. Wright appears to be objecting not to the settlement, which she agrees is  
28 "reasonable" but to the underlying allegations of the case, which she disbelieves. An objection

1 claiming that the underlying case is without merit is “irrelevant and cannot undermine approval.”  
2 *Dennis v. Kellogg Co.*, No. 09-CV-1786-L WMC, 2013 WL 6055326, at \*6 (S.D. Cal. Nov. 14,  
3 2013). Further, Ms. Wright’s objection appears to misunderstand Plaintiff’s allegations in the  
4 case, as explained in the class notice, which were not that IMVU represented that it would *not*  
5 truncate user created audio files, but then broke this promise, and that it did so not to preserve any  
6 third party copyright, but instead to increase its own profits. The settlement does not require  
7 IMVU to restore audio files that were purchased in violation of copyright law, but does require  
8 IMVU to restore other files and to partially refund credits that it obtained from the sale of all  
9 truncated files.

10 10. Even if Ms. Wright’s objection were directed to the terms of the settlement, it would  
11 have to be overruled, because she provides no basis for her challenge to counsel’s lodestar or the  
12 incentive award. Nor does she say what would be an appropriate fee or incentive award for the  
13 settlement accomplishments that she agrees to be “reasonable.” Such “[c]onclusory and unsub-  
14 substantiated objections are not sufficient to warrant a reduction in fees.” *Miller v. Ghirardelli*  
15 *Chocolate Co.*, No. 12-CV-04936-LB, 2015 WL 758094, at \*11 (N.D. Cal. Feb. 20, 2015); *Lucas*  
16 *v. White*, 63 F.Supp.2d 1046, 1057 (N.D.Cal.1999) (holding that “The party opposing the fee ap-  
17 plication has a burden of rebuttal that requires submission of evidence to the district court chal-  
18 lenging the accuracy and reasonableness of the hours charged or the facts asserted by the  
19 prevailing party in its submitted affidavits.”); *accord In re Toyota Unintended Acceleration*, 2013  
20 WL 8541175 (C.D.Cal. July 24, 2013) (rejecting unsupported objections to a proposed fee  
21 award); *EnPalm, LLC v. Teitler*, 162 Cal.App.4th 770, 775 (2008) (same); *see also Smith v. CRST*  
22 *Van Expedited, Inc.*, No. 10-CV-1116- IEG WMC, 2012 WL 5873701, at \*2 (S.D. Cal. Nov. 20,  
23 2012) (stating “Whatever the amount, [objector] makes no showing of what would be sufficient  
24 or why. Such unsupported objection cannot justify denial of approval”); *see also Ellis v. Naval*  
25 *Air Rework Facility*, 87 F.R.D. 15, 20 (N.D.Cal.1980) (“He does not specify what amount would  
26 fairly, adequately, and reasonably settle his monetary claims. Nor does he state on what grounds  
27 he deserves a larger share of the settlement funds. This Court thus finds it impossible to respond  
28 to his objection in any way other than dismissing it for lack of support.”).



1           11. Finally, the facts that Ms. Wright is the sole objector, and that there were only 29 per-  
2 sons who opted out, out of more than 119,000 persons who were directly notified of the settle-  
3 ment (representing 0.0008% and 0.03%, respectively, of class members) is further evidence that  
4 that the overwhelming majority of class members support the settlement. Where, like here, only  
5 an extremely small percentage of the class has reacted negatively, the law strongly favors final  
6 approval. *See, e.g., 4 Newberg on Class Actions* at § 11.41; *Wershba*, 91 Cal.App.4<sup>th</sup> at 244-45.

7           12. The Court finds that the Settlement is in all respects fair, reasonable and adequate.  
8 Each Class Member will automatically receive a refund, to his or her IMVU Account, of IMVU  
9 Promotional Credits (“Predits”), in a quantity equal to 60% of the quantity of IMVU Credits he or  
10 she used to pay for the Affected Audio Products. No claim form is required. If the Class Member  
11 does not want to receive the IMVU Predits, he or she may elect a refund, to his or her IMVU Ac-  
12 count, of IMVU Credits, in a quantity equal to 30% of the quantity of IMVU Credits he or she  
13 used to pay for the Affected Audio Products or (2) the cash value of those refunded Credits, com-  
14 puted at the rate of \$0.00040 per IMVU Credit. The settlement was reached after full discovery  
15 and has the approval of able and experienced counsel for all parties. *See, e.g., 7-Eleven*, 85  
16 Cal.App.4<sup>th</sup> at 1145 (a full and fair assessment of a settlement “is nearly assured when all discov-  
17 ery has been completed and the case is ready for trial.”); *see also In re First Capital Holdings*  
18 *Corp. Fin. Prods. Sec. Litig.*, MDL Docket No. 901 All Cases, 1992 U.S. Dist. LEXIS 14337, at  
19 \*8 (C.D. Cal. June 10, 1992) (finding belief of counsel that the proposed settlement represented  
20 the most beneficial result for the class to be a compelling factor in approving settlement); *Kirko-*  
21 *rian v. Borelli* (N.D. Cal. 1988) 695 F. Supp. 446, 451 (opinion of experienced counsel is entitled  
22 to considerable weight); *Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F. Supp. 610, 616-17, 622  
23 (recommendations of plaintiffs’ counsel should be given a presumption of reasonableness); *Dunk*,  
24 48 Cal.App.4<sup>th</sup> at 1802.

25           13. The Court therefore finally approves the Settlement for all the reasons set forth in the  
26 Motion for Final Approval including, but not limited to, the fact that the Settlement Agreement  
27 was the product of informed, arms-length negotiations between competent, able counsel and con-  
28 ducted with the oversight and involvement of an independent, well respected, and experienced

1 mediator; the record was sufficiently developed and complete through meaningful discovery and  
2 motion proceedings to have enabled counsel for the Parties to have adequately evaluated and con-  
3 sidered the strengths and weaknesses of their respective positions; the Litigation involved dis-  
4 puted claims, and this dispute underscores the uncertainty and risks of the outcome in this matter;  
5 the Settlement provides meaningful remedial and monetary benefits for the disputed claims; and  
6 the Parties were represented by highly qualified counsel who, throughout this case, vigorously  
7 and adequately represented their respective parties' interests.

8  
9 14. The Settlement is in the best interests of the Settlement Class in light of the degree of  
10 recovery obtained in relation to the risks faced by the Settlement Class in litigating the Class  
11 Claims. The relief provided to the settling Class Members under the Settlement Agreement is ap-  
12 propriate as to the individual members of the settling Class and to the Class as a whole. All re-  
13 quirements of statute, rule, and Constitution necessary to effectuate the Settlement have been met  
14 and satisfied. The Parties shall continue to effectuate the Settlement Agreement in accordance  
15 with its terms.

16 15. By operation of this Final Approval Order and Judgment, Plaintiff on the one hand,  
17 and the Released Parties on the other hand, shall have unconditionally, completely, and irrevoca-  
18 bly released and forever discharged each other from and shall be forever barred from instituting,  
19 maintaining, or prosecuting (1) any and all claims, liens, demands, actions, causes of action, obli-  
20 gations, damages or liabilities of any nature whatsoever, whether legal or equitable or otherwise,  
21 known or unknown, that actually were, or could have been, asserted in the Litigation, based upon  
22 any violation of any state or federal statutory or common law or regulation, and any claim arising  
23 directly or indirectly out of, or in any way relating to, the claims that actually were, or could have  
24 been, asserted in the Litigation, that Plaintiff on the one hand, and Defendant on the other hand,  
25 have had in the past, or now have, related in any manner to the Released Parties' products, serv-  
26 ices or business affairs, and (2) any and all other claims, liens, demands, actions, causes of action,  
27 obligations, damages or liabilities of any nature whatsoever, whether legal or equitable or other-  
28 wise, known or unknown, that Plaintiff on the one hand, and Defendant on the other hand, have  
had in the past or now have, related in any manner to any and all Released Parties' products, serv-

1 ices or business affairs, or otherwise.

2 16. By operation of this Final Approval Order and Judgment, Settlement Class Members  
3 shall have unconditionally, completely, and irrevocably released and discharged the Released Par-  
4 ties from any and all claims, rights, demands, actions, causes of action, suits, debts, liens, con-  
5 tracts, liabilities, agreements, costs, expenses, or losses of any kind whatsoever, including any  
6 known or unknown claims, which actually were, or could have been, asserted in the Litigation  
7 and that are based on the truncation of the playback time of the Affected Audio Products. "Af-  
8 fected Audio Products" means all audio products offered for sale in the IMVU Virtual Catalog  
9 that were purchased after September 21, 2008 and before December 1, 2010, whose original  
10 playback length was greater than twenty seconds. "Released Parties" means IMVU, and all of  
11 IMVU's past and present officers, directors, attorneys, parents, subsidiaries, managers, succes-  
12 sors, predecessors, agents, assigns, and legal representatives.

13 17. Plaintiff and Settlement Class Members shall, by operation of this Final Approval Or-  
14 der and Judgment, be deemed to have waived the provisions, rights and benefits of California  
15 Civil Code § 1542, and any similar law of any state or territory of the United States or principle  
16 of common law. Section 1542 provides:

17 A general release does not extend to claims which the creditor does not know or suspect to  
18 exist in his or her favor at the time of executing the release, which if known by him or her  
19 must have materially affected his or her settlement with the debtor.

20 18. Nothing herein shall bar any action or claim to enforce the terms of the Settlement  
21 Agreement.

22 19. No action taken by the Parties, either previously or in connection with the negotia-  
23 tions or proceedings connected with the Settlement Agreement, shall be deemed or construed to  
24 be an admission of the truth or falsity of any claims or defenses heretofore made or an acknowl-  
25 edgment or admission by any Party of any fault, liability or wrongdoing of any kind whatsoever  
26 to any other Party. Neither the Settlement Agreement nor any act performed or document exe-  
27 cuted pursuant to or in furtherance of the Settlement: (a) is or may be deemed to be or may be  
28 used as an admission of, or evidence of, the validity of any claim made by the Settlement Class

1 Members or Class Counsel, or of any wrongdoing or liability of the persons or entities released  
2 under this Final Approval Order and Judgment and the Settlement Agreement, or (b) is or may be  
3 deemed to be, or may be used as an admission of, or evidence of, any fault or omission of any of  
4 the persons or entities released under this Final Approval Order and Judgment and the Settlement  
5 Agreement, in any proceeding in any court, administrative agency, or other tribunal. Defendant's  
6 agreement not to oppose the entry of this Final Approval Order and Judgment shall not be con-  
7 strued as an admission or concession by Defendant that class certification was appropriate in the  
8 Litigation or would be appropriate in any other action.

9       20. For the reasons stated in the separate Order on Class Counsel's Application for an  
10 award of attorneys' fees and costs and incentives, the following amounts shall be paid by IMVU:

- 11           a. Fees and expenses to Class Counsel: \$1,150,000.00
- 12           b. Incentive award to Plaintiff Peter MacKinnon, Jr.: \$10,000.00

13 Such amounts shall be paid according to the terms of the Settlement Agreement. Of the amount  
14 paid to Class Counsel, \$50,000.00 shall be held in the Escrow Account, until the parties certify  
15 and the Court finds that all required distributions have been made to Settlement Class Members.

16       21. No later than one week after all distributions have occurred, or six months and one  
17 week after the Effective Date, whichever is earlier, the Parties shall submit a joint report to the  
18 Court certifying that all required distributions have been made to Settlement Class Members and  
19 detailing the number of persons who were provided IMVU Predits, IMVU Credits, and cash un-  
20 der the settlement, as well as the aggregate amounts of IMVU Predits, IMVU Credits and cash  
21 paid to Settlement Class Members. The Parties shall submit with the joint report a stipulation and  
22 proposed order finding that the distributions are complete. Any party shall be entitled to appear  
23 ex parte, pursuant to the Court's regular ex parte procedures, to obtain the Court's approval of the  
24 stipulated order.

25       22. Except as provided in this Order, Plaintiff shall take nothing against Defendant by  
26 their Complaint.

27       23. This order shall constitute a final judgment binding the parties with respect to this  
28 Litigation.

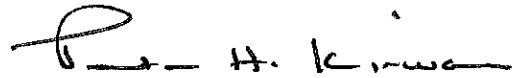
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24. Without affecting the finality of the judgment hereby entered, the Court reserves jurisdiction over the implementation of the Settlement Agreement.

25. Without further order of the Court, the parties may agree to reasonable extensions of time to carry out any provisions of the Settlement Agreement.

There is no just reason for delay in the entry of this Judgment, and immediate entry by the Clerk of the Court is expressly directed.

**IT IS SO ORDERED** this 24 day of FEB, 2016.



HON. PETER H. KIRWAN  
SUPERIOR COURT JUDGE

#	Name	City	State	GCG ID#
1	Sarah Truitt	DELMAR	MD	0587D4CB78
2	Korryn Cristini	JAFFREY	NH	2E6DE2D185
3	Doug Dimadome	CRACKALCAYT	CT	31FFFF72F7
4	Cheryl Briones	HOUSTON	TX	33218F6282
5	Pamela Dascher	CORPUS CHRISTI	TX	3EF18ADB9A
6	Von Marie	ORLANDO	FL	48BA553952
7	Minh	ROANOKE RAPIDS	NC	54A3BAF2CF
8	Marsha Mills	NORTH BROOKFIELD	MA	5AB9220936
9	Lewis Hodge	MONROE	MI	5D0DB272F9
10	Tammy Wilson	NASHVILLE	TN	6DB595378F
11	Robert Miller	SHREVEPORT	LA	7587861347
12	Joan	MANHATTAN	NY	78FDA16E1D
13	Natalie Garcia	SAN YGNACIO	TX	7AF20D0674
14	Laura Kirkpatrick	WAYNESBORO	VA	7D7405FDE7
15	Zoey Currie	WHITE LAKE	MI	7F92C49DF3
16	Sean Frazier	BENWOOD	WV	8335F9C34C
17	Jessica Rucker	GENEVA	AL	89F2AC680E
18	Jessica Rucker	GENEVA	AL	89F2AC680E
19	Jessica Rucker	GENEVA	AL	89F2AC680E
20	Christine York	NORTH HIGHLANDS	CA	9C962C04BB
21	Sweetangelteresa	ST JOSEPH	MO	A128512564
22	MacKinnon	SHREVEPORT	LA	AA75EAF099
23	Teresa Goldizen	ST JOSEPH	MO	B712A35575
24	Alba Moore	TAYLOR	AZ	C055B00A52
25	Leta Ream	LUDINGTON	MI	C4CB026030
26	Jameelah Oxendine	SYRACUSE	NY	C5B7F26254
27	William R Martin	TULSA	OK	C5FF539C38
28	Krissanie Mabe	JACKSON SPRINGS	NC	D4C4599DDE
29	Shante	PASO ROBLES	CA	E8A7FB2CAE
30	Sherie Kirby	RAVENNA	OH	F261F67618
31	Kim	BRISTOL	VA	FDFA2F46F3

EXHIBIT A