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Robert S. Arns, State Bar No. 65071
RSA@ARNSLAW.COM
Jonathan E. Davis, State Bar No. 191346
JED@ARNSLAW.COM
Steven R. Weinmann, State Bar No. 190956
SRW@ARNSLAW.COM
THE ARNS LAW FIRM
515 Folsom Street, 3rd Floor
San Francisco, CA 94105
Tel: (415) 495-7800
Fax: (415) 495-7888

Jonathan M. Jaffe, State Bar No. 267012
JMJ@JAFFE-LAW.COM
JONATHAN JAFFE LAW
3055 Hillegass Avenue
Berkeley, CA 94705
Tel: (510) 725-4293
Fax: (510) 868-3393

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ANGEL FRALEY; PAUL WANG; SUSAN MAINZER; JAMES H. DUVAL, a minor, by and through JAMES DUVAL, as Guardian ad Litem; and W. T., a minor, by and through RUSSELL TAIT, as Guardian ad Litem; individually and on behalf of all others similarly situated,

Plaintiffs,

v.

FACEBOOK, INC., a corporation; and DOES 1-100,

Defendants.

Case No. CV 11-01726 LHK PSG

DECLARATION OF DAVID TABER IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

Date: May 24, 2012
Time: 1:30 p.m.
Courtroom: 8
Judge: Hon. Lucy H. Koh
Trial Date: December 3, 2012

1 1. I, David Taber, declare and state as follows:

2 2. I have been retained as an expert by plaintiffs' attorneys to consult with them
3 concerning the factual issues presented in the above case.

4 3. I am a Marketing and Sales industry professional in the State of California and have
5 over 25 years experience in the High Technology industry. In the course of this experience, I
6 have been the Vice President of Marketing at two publicly-traded software companies, and
7 have worked as a consultant in marketing, advertising, and customer relationship management
8 (CRM) specializations for over 100 clients in six countries. In these roles, I have run
9 advertising campaigns with budgets in the hundreds of thousands of dollars in online, print, and
10 broadcast advertising, and I have been using Google Adwords for my clients continuously since
11 2002. I have evaluated online campaigns for both the quality and quantity of leads produced,
12 using industry standard and proprietary methods. Some of my clients have themselves been
13 online advertising firms, focusing on bid optimization (to get the best click through rate) and
14 lead quality improvement (to get the best conversion rate). I have also been in charge of the e-
15 commerce and product websites for Sybase, ILOG S. A. (French optimization software
16 company), Sun Microsystems, and several of my clients in the US and overseas.

17 4. I am the founder and CEO of SalesLogistix, a CRM management consultancy and
18 Salesforce.com system integrator. I have taught at UC Berkeley's Haas Graduate School of
19 Business, and guest-lectured at Carnegie Mellon University and other institutions on marketing
20 topics such as consumer advertising, online community management, and online market
21 research techniques. I have published more than 200 articles on marketing, sales, and CRM
22 topics, including several covering advertising, online marketing, lead generation, lead-to-sales
23 conversion, and online community management. Attached hereto is a copy of my most current
24 resume setting forth in detail my qualifications and experience.

25 5. In connection with my work in this case, I have read, reviewed, and analyzed the
26 following documents:

- 27 a. Plaintiff's Second Amended Complaint
- 28 b. Defendant's Motion to Dismiss
- c. Plaintiff's Opposition to Defendant's Motion to Dismiss
- d. Order Granting In Part And Denying In Part Defendant's Motion To Dismiss
- e. Plaintiffs' Statement of Facts Vol. I

- 1 f. Plaintiffs' Statement of Facts, Vol. II
- 2 g. Depositions of Chris Plambeck, John Hegeman, and Gokul Rajaram
- 3 h. Deposition Exhibits 32, 48, 326, 323, 366, 376, 448, 451, 488, 524, 581, 583,
4 586, 588, 589, 592, 596, 612, 618, 623, 682, 683, 684, 685, and 690.
- 5 i. Additional Bates Stamped Documents FB_FRA 1037, 1138-1140, 1879-1881,
6 69757, 69758, 99715-99719, 99757.

7 6. Furthermore, in preparation for this case, I have reviewed and relied upon the
8 following references:

- 9 a. Forrester Research
- 10 b. Nielsen Research
- 11 c. BazaarVoice Social Commerce Statistics
- 12 d. GrabStats eCommerce Statistics
- 13 e. PowerReviews Social Commerce Statistics
- 14 f. eMarketer.com
- 15 g. Salesforce.com Secrets of Success, David Taber (Prentice Hall, 2009)

16 These are the types of materials typically relied on by experts in my field performing
17 marketing and advertising projects.

18 7. I submit the following findings and conclusions in this case:

- 19 a. I understand that Facebook claims that its "Sponsored Stories" ads are not
20 advertisements. This claim is not credible: Sponsored Stories ads are
21 understood by the advertiser as an ad; they are set up, purchased, paid for, and
22 measured like an ad; they appear in "print" like an ad, and they have the same
23 effect as an advertisement. They are marketed by Facebook as advertisements.
24 Furthermore, from the perspective of a user (Facebook site visitor), a Sponsored
25 Story ad behaves like an advertisement: it appears in the same quadrant of the
26 page as a Facebook ad; it may include the advertiser's logo; and most of the
27 click-through actions available for a Sponsored Story ad take the user to the
28 advertiser's content or website. Indeed, Facebook's own employees (in their
emails and depositions) have [REDACTED] in
[REDACTED] "Sponsored Story" ads seem indistinguishable
from Webster's Dictionary definition of the word advertising: "the action of

1 calling something to the attention of the public especially by paid
2 announcements...especially one published or broadcast.” In the colloquialism
3 of early TV, “and now a word from our sponsor” meant “here comes an ad.”
4 So, “Sponsored Story” ads should more properly be called “Friend-endorsed
5 Advertisements.” When I refer to “Sponsored Story” ads in this declaration, I
6 mean “Friend-endorsed Advertisements.”

- 7 b. A “friend endorsement” has always been the best method of marketing and
8 advertising. A recommendation, brand reference, referral, or testimonial from a
9 friend is perceived as more credible and relevant than advertising from vendors.
10 Even endorsements from people you barely know are quite powerful, and an
11 entire genre of marketing has developed around “word of mouth” marketing.
12 From Regis McKenna’s Influence Pyramid to NetPromoter Scores to Nielsen
13 BuzzMetrics to the WOMMY Awards – the marketing industry focuses on
14 obtaining endorsements as the “killer” tactic. (WOMMY stands for the Word-
15 of-Mouth Marketing Award.) In Business-to-Business marketing, what matters
16 are the endorsements of professional colleagues; in Business-to-Consumer
17 markets, it’s the endorsement from a friend.
- 18 c. “Word-of-mouth marketing is based on the simple premise that a
19 recommendation from a friend carries more weight than an ad message.... For
20 2011, WOM spending in the U.S. is forecast to hit \$2.48 billion, according to
21 PQ Media...” – Ad Week, Mouth Meets Mouse, Nov 2011.
- 22 d. Before social media advertising, a non-celebrity would have had difficulty
23 showing commercial value in her identity because there was no economically
24 viable way to distribute endorsements. Prior to the internet and social media, it
25 was only economical for marketing to focus on large-scale groups of people.
26 The internet allows marketing that is effective with very small and specialized
27 groups. This “long tail” marketing makes it economic to reach microscopic
28 segments. So even though the value of an endorsement from a “nobody” is
smaller in scale than for a well-known public figure, the endorsement value is
still measurable. Friend-endorsed ads have higher market value among
advertisers than non-friend-endorsed ads, all other things being equal. Thanks

1 to social media, there is measurable commercial value in one's identity, even for
2 the everyman.

3 e. Before the advent of social media networks, it was impossible to make a “friend
4 endorsement” occur at scale, i.e., reach a large audience of friends. Social
5 media advertising seeks to leverage the large reach of a social network and the
6 “frictionless” instant communication of the Internet to magnify the power of
7 word-of-mouth without requiring any effort on the part of the users or their
8 friends.

9 f. Facebook – with the world’s largest social network and infrastructure
10 specifically designed to exploit its advantage – has found a way to aggregate
11 and concentrate that commercial value. Advertisers can promote a Facebook
12 User’s endorsement to all of that user’s friends, so they can get the advertising
13 value from the “friend endorsement.” Mark Zuckerberg (Facebook CEO) and
14 Sheryl Sandberg (Facebook COO) are absolutely correct when they say that
15 Friend Endorsed advertising is the Holy Grail of Advertising. Not only can the
16 advertisers leverage user endorsements faster and more effectively than ever
17 before possible, they can measure the results of their campaigns more directly
18 than with other forms of advertising. Indeed, if the advertiser has an e-
19 commerce site and a properly configured CRM system, they can track the reach
20 and effect of their advertising all the way through to conversion, purchase, and
21 loyalty impact. Social advertising thus enables “closed loop marketing” that is
22 the nirvana for businesses. Facebook clients indicated they believed that BASS
23 (the internal code name for Sponsored Stories ads, which stands for Boosting a
24 Stream Story) “was going to transform marketing.”

25 g. What’s good for the advertiser may not be good for the Facebook user.
26 Facebook provides no mechanism for users to discover that their names are
27 being used in Sponsored Story ads. Users are not notified in any way when they
28 are involved with a Sponsored Story ad. Simply clicking the “like” button,
browsing an advertiser’s Facebook page, or playing a game can trigger the
creation of a Sponsored Story advertisement. Taking ordinary “social actions”

1 within the Facebook site may cause the publication of the user's name alongside
2 the advertiser's logo. These actions include:

- 3 • Clicking "Like" on a page
- 4 • Clicking "Like" on a page post
- 5 • Using an application more than once in a month
- 6 • Sharing an application more than once in a week
- 7 • Playing a game for more than 10 minutes in a month
- 8 • Visiting ("checking in" or "claiming a deal") an advertiser's
"claimed place" in Facebook
- 9 • Hitting the "Like" or "Share" button on an advertiser's web site.

10 h. Most Facebook users do not even understand the concept of the Sponsored Story
11 ads, or that their name and likeness will be used in them. When a user first signs
12 up for Facebook, they are not even presented with a "click through"
13 acknowledgement and acceptance of the Sponsored Stories ad concept. The
14 words "Sponsored Story" do not appear at all in the Terms of Use/Statement of
15 Rights and Responsibilities, and the entire topic of permission to use the name,
16 profile, and picture in advertising is relegated to two sentences buried in the
17 middle of a 7-page document. The user is told that they can use the Privacy
18 Settings to limit how their name and picture will be used with advertising, but
19 the user is not allowed to actually see that Privacy Settings page until they have
20 signed up and thereby accepted all the terms. This is hardly an example of
21 Informed Consent.

22 i. Indeed, it seems to have been designed to obfuscate key issues of privacy and
23 control. As an example, the Account Settings page that allows a user to prevent
24 his name and likeness from appearing in Facebook Ads does not apply to
25 Sponsored Stories ads. The typical Facebook user would believe that Opting
26 Out of Facebook Ads would opt them out of all friend endorsed Facebook
27 advertising. Facebook's advertising terminology serves merely to confuse the
28 user. A user's only real option is to opt out of all Sponsored Stories ads, which
means opting out of Social Actions altogether. But users have no way to know
this until after they have signed up – and it's hard to believe that even then the
user would understand the consequences.

- 1 j. Best practices in designing user registration flow on websites is to follow
2 principles that Apple, Cisco, HP, IBM, and other sites use, but that Facebook
3 does not:
- 4 i. Providing full access to all relevant terms, frequently asked questions, and
5 security control descriptions prior to agreeing to the terms and conditions
6 of the site.
 - 7 ii. Providing a fully-printable version of all parts of the agreement prior to
8 agreeing to it.
 - 9 iii. Providing a single location for opt-in/opt-out functionality.
 - 10 iv. Defaulting controversial settings to opt-out, requiring explicit action to
11 opt-in.
 - 12 v. Providing ways of opting out of a specific action as part of the site's
13 notification flow before the action takes place.
- 14 k. It is standard practice in the marketing and advertising industries that any
15 customer used in an advertisement be specifically notified and permission (or
16 "release") obtained prior to the first running of any ad. Further, in most
17 advertising, a person is directly compensated for their participation in the
18 advertisement or endorsement. As a marketing expert, it is my opinion that a
19 Facebook user who provides the friend endorsement in the Sponsored Story
20 advertisement (1) should be directly notified that they are in the Sponsored
21 Story ad and be given the ability to opt-out of that ad prior to its appearance, (2)
22 should be able to monitor how many times their name and likeness is used (and
23 by which advertisers) in a given period, and (3) should be able to monetize the
24 use of their credibility and social network in the advertising, as they are able to
25 with Google AdSense.
- 26 l. Facebook's Sponsored Stories ads are a powerful new advertising medium that
27 leverages the trust in the User and the size of his Social Network for the benefit
28 of the advertisers and Facebook. Any User – whether a star or an everyman –
who provides Facebook with a Friend Endorsement that will be sold to
advertisers is entitled to compensation for the value they are providing. Since

1 none of the Facebook users have been paid to date for their part in Sponsored
2 Stories ads, there has been measurable, actual damage.

3 m. Social advertisements are likely to carry a premium price because they are more
4 effective than conventional ad placements. Why would this be this true?
5 Consumers are inundated with advertisements – estimated at over 6,000 brand
6 impressions per day in the US – and ads have very low credibility. In the
7 immortal words of Seth Godin, “All Marketers are Liars.” To counteract this,
8 consumers look for information that comes from disinterested parties whom
9 they can trust: “nothing is as credible as someone who has nothing to sell.”
10 Consequently, recommendations from customers – particularly friends and
11 colleagues – are extremely important to purchase decisions. Market research
12 conducted by Forrester/Jupiter Research, Nielsen Media, Nielsen Incite, Net
13 Promoter, PowerReviews, Buzzillions, BazaarVoice, and others has quantified
14 the effectiveness of endorsements from friends, communities and social
15 networks as about four times that of a vendor advertisement. The fact that the
16 endorsement comes from a someone in your social network – a friend whose
17 name and photo you recognize – magnifies this effect. Further, the fact that a
18 person is in the same social network means that the ad is more likely to be
19 relevant to her – a key determinant of an advertisement’s impact and
20 effectiveness. In their S-1 filing (Exhibit 637), Facebook characterizes these
21 effects as Reach, Relevance, Social Context, and Engagement. It’s no wonder
22 that the click-through rate (CTR) of Facebook’s Sponsored Stories ads has been
23 measured from [REDACTED] times the rate of conventional online ads.

24 n. Facebook’s own marketing to advertisers and pitches to Wall Street analysts
25 echo these statistics. According to Facebook statements, an ad citing my name
26 and showing a likeness of me will be twice as memorable to my social network,
27 and people in my network are four times as likely to take action based on that ad
28 than on a conventional one. This is a powerful elixir that advertisers will pay
extra for.

o. According to industry analyst data, 74% of consumers rely on social networks to
guide purchase decisions (Gartner Group, July 2010). According to recent

1 Nielsen statistics, consumer opinions posted online were the second most
2 trusted source of product/service information; with a 49% score, these online
3 opinions were surpassed only by recommendations from people known directly
4 by the consumer (July 2011 Research Trends in Advertising Spend and
5 Effectiveness). These and other widely cited industry statistics point to the
6 heightened effectiveness and marketing value of a “Like”, reference,
7 testimonial, preference, or other “pointer” to a brand – particularly within the
8 immediate social sphere of a network of friends.

- 9 p. Advertisers pay in proportion to what they perceive the marketing value will be
10 and they allocate more funds to campaigns that deliver on those metrics. An ad
11 that is more effective will command a higher price, all other things being equal.
12 This principle applies either to bidding (CPC) or rate-card (CPM) ad purchasing
13 models.
- 14 q. The online advertising industry uses a few key metrics to measure ad value. A
15 few of the most common are click-through-rate, reach, conversion rate,
16 impressions, unaided awareness, engagement, social context, brand recognition,
17 spend, cost-per-thousand impressions, and cost-per-click. Advertisers generally
18 use these values as proxies to determine how effective an advertising campaign
19 is.
- 20 r. While the advertising industry would like to truly measure ad effectiveness by
21 demonstrating to what degree a specific ad increases sales, this is almost
22 impossible to achieve in the real world. It is not yet possible to link, for
23 example, the viewing of an ad for shoes one week with an in-store purchase
24 three weeks later. Until the technology gets to that point, advertisers must settle
25 for proxies for ad value measurement.
- 26 s. The one proxy that cuts across the board in all CPC advertising is the click-
27 through-rate. For CPC advertisers, CTR is always relevant (if for no other
28 reason than its measurability and ubiquity across media), no matter what the
goals of the campaign. CTR is also relevant for CPM advertisers, particularly
those with ecommerce sales channels. Both Google and Facebook include CTR
metrics as part of their standard CPC analytics and reports. Whether CTR is the

1 most important criterion for judging an advertising vehicle, or merely one of the
2 top criteria, will depend on the campaign's objectives and the advertiser's
3 business situation. That said, CTR is a key metric of:

- 4 i. an ad's relevance (the audience cares about the product category, the
5 target audience is well matched to the message), and
- 6 ii. the audience's level of engagement (measuring behavior).

7 t. Consequently, CTR is the most broadly-used proxy for an online ad's
8 effectiveness, showing that the viewer was interested enough to take action on the
9 ad in order to find out more, respond to the call to action, or take the next step in
10 the sales process. Even by Facebook's own admission, CTR is so universal that
11 they use it to normalize differences across advertisement variations (e.g., different
12 sizes, page locations, colors, etc.), even using it to compare the value of CPC ads
13 to CPM ads. Further, Facebook (like Google) has included CTR in its internal
14 algorithms that decide the ranking (or page-position) of an advertisement. Their
15 algorithm places higher-CTR ads above the lower-CTR ads (all other things being
16 equal), because they are more likely to (1) cause less "audience fatigue", (2) be a
17 more efficient use of limited advertising space, and (3) be more effective for the
18 advertiser.


19 u. Facebook captures CTR metrics for the ads shown on the site. In fact, it goes to
20 the extra step to [REDACTED]
21 [REDACTED]
22 [REDACTED]. (Exhibit 326, Bates 1024)

23 v. A lower CTR is acceptable to advertisers only when (1) the reach is larger, (2) the
24 purchase conversion rate (not the same as Facebook's proprietary "conversion"
25 definition) is higher, or (3) the cost per click (CPC) is lower.

26 w. CTR is thus the key way of comparing the value of a "friend endorsed" Sponsored
27 Story advertisement: it is objective, easily available across wide swaths of media,
28 and is very strongly correlated with effectiveness. Sponsored Story ads have
greater value to advertisers because a person's social network will click them a
higher proportion of the time – thus yielding a higher CTR – than an ad without a
friend endorsement.

1 x. Plaintiffs' actual damages are quantified by the additional advertising revenue
2 Facebook earned by using plaintiffs' likenesses. This additional revenue from
3 advertisers is the aggregation of the amount for which plaintiffs would have been
4 able to negotiate had the use of their likenesses and name in the ads required their
5 consent.

6 8. I declare under the penalty of perjury and under the laws of the United States of
7 America that the forgoing is true and correct and based upon my personal knowledge and/or
8 professional opinions, and that if called upon to testify, I could verify the accuracy of the same.
9 This document was executed in the city of San Francisco, California on March 27, 2012.

10
11 By: 
12 CEO, SalesLogistix Corporation