

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 RS**

**DECLARATION OF FERNANDO  
TORRES REGARDING THE  
VALUE OF INJUNCTIVE RELIEF**

1 1. I, FERNANDO TORRES, declare and state as follows:

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

4 3. I am a professional economist in the State of California and have over 30 years'  
5 experience in applied and theoretical economics. In the course of this experience, I have been a  
6 consultant, a professor, and a business manager. Both my undergraduate and post-graduate  
7 degrees are in economics, the latter with a concentration in econometrics. Since at least 2004, I  
8 have specialized in the analysis and valuation of intellectual property and intangible assets. I  
9 am a member and Chief Economist of IPmetrics LLC, an intellectual property consulting firm.  
10 Attached hereto is a copy of my most current curriculum vitae setting forth in detail my  
11 qualifications and experience.

12 4. Additionally, I have served as a consultant on numerous cases involving intellectual  
13 property infringement issues, including rights of publicity and valuing the misappropriation of  
14 peoples' names and likenesses for commercial use. I have experience in complex commercial  
15 litigation cases nationally.

16 5. I have spent over 60 hours consulting in this case. I have reviewed hundreds of  
17 documents that are pertinent to the calculation of damages in this case, including:

- 18 a. The tentative settlement agreement between the plaintiff class and the defendant;
- 19 b. The Court's Order of August 17, 2012;
- 20 c. Plaintiff's Second Amended Complaint;
- 21 d. Order Granting In Part And Denying In Part Defendant's Motion To Dismiss;
- 22 e. Plaintiff's Statement of Facts;
- 23 f. Depositions of Chris Plambeck, John Hegeman and Gokul Rajaram;
- 24 g. Deposition Exhibits 32, 48, 326, 323, 366, 376, 448, 451, 488, 524, 581, 583,  
25 586, 588, 589, 592, 596, 612, 618, 623, 654, 682, 684, and 685;
- 26 h. Additional Bates Stamped Documents FB\_FRA 1037, 1138-1140, 1879-1881,  
27 69757, 69758, 99715-99719, 99757-8, 128219-20;

1 i. Numerous articles from periodicals regarding the burgeoning market where  
2 individuals are or will be able to offer their personal information, such as their  
3 preferences and endorsements, to online advertisers for compensation. These  
4 periodicals include the MIT Technology Review, Forbes, The New York Times,  
5 The Wall Street Journal, and others. The specific articles are cited in the  
6 footnotes of this Declaration where referenced.

7 6. Furthermore, in the course of my work in this case, I have reviewed and relied upon  
8 the following authoritative references:

- 9 a. "Facebook Ads and Sponsored Stories" Facebook, 2011;  
10 b. J. Brown, A.J. Broderick, and N. Lee, "Word of mouth communication within  
11 online communities: Conceptualizing the online social network." Journal of  
12 Interactive Marketing, Elsevier, Vol. 21, No. 3, 2007, pp 2-20;  
13 c. R. Hof, "Facebook's New Advertising Model: You" Forbes, Dec. 5, 2011;  
14 d. A. Lipsman, G. Mudd, Mike Rich, and S. Bruich, "The Power of Like. How  
15 brands reach and influence fans through social media marketing," a White Paper  
16 collaboration between comScore and Facebook, July 26, 2011;  
17 e. J. Kistner, "Facebook's Best Kept Secret: Building Conversions And Revenue  
18 With Ads For Fans" whitepaper, 2011, Webtrends, Inc.

19 These are the types of materials experts in my field typically rely on when completing  
20 assignments such as mine in this case.

21 7. Also in connection to my work in this case, I authored an extensive declaration  
22 explaining the methods by which I intended to calculate the damages to the class members for  
23 their use in Sponsored Stories ads. I prepared for and was subject to a deposition by  
24 defendant's counsel based on my declaration. I read the declaration in opposition to Plaintiffs'  
25 motion for class certification of Dr. Randolph Bucklin as well as his deposition testimony and I  
26 authored a rebuttal declaration thereto. I provided two possible models for analyzing the value  
27 of the class members' endorsement as used in Sponsored Stories ads. I most recently authored  
28

1 a declaration stating my opinions regarding the value of the injunctive relief in this case, which  
2 was attached to the plaintiffs' motion for preliminary settlement approval.

3 8. Since the time the plaintiffs submitted their previous motion, new data has been  
4 made available and new features have been added to the injunctive relief. I have reviewed the  
5 new data and the new injunctive relief terms agreed to by the parties in this case and have  
6 discussed the terms therein. I have been asked to provide a valuation of this injunctive relief.

7 9. The injunctive relief includes relief in the form of (1) a revision of the Facebook  
8 Terms, section 10.1 that clarifies to users that they give Facebook permission to use their name  
9 and likeness in Sponsored Stories ads, (2) a mechanism that will allow users to see and control  
10 which actions they have taken that will lead to their being featured in Sponsored Stories ads,  
11 (3) additional provisions requiring that users who are minors either receive parental consent to  
12 be featured in Sponsored Stories ads or allows the parents or guardians of minors to remove  
13 their children from Sponsored Stories ads, (4) additions to Facebook's "Family Safety Center"  
14 that explain Sponsored Stories ads and, in appropriate circumstances, enable parents to prevent  
15 their children from being featured in Sponsored Stories ads, and (5) an opportunity to  
16 Plaintiffs' counsel to review Facebook's statements regarding advertising and ensure that  
17 Sponsored Stories are clearly identified as ads.

18 10. I believe this injunctive relief provides two major benefits to the class members.  
19 First, this relief provides a proper vehicle for informed consent, thus negating the violation of  
20 the right of publicity at scale for the class. Second, the relief gives the users control of their  
21 endorsements, which they did not previously have. Their endorsements are clearly an asset of  
22 value, a fact demonstrated by data showing advertisers paid Facebook a premium for so-called  
23 "friend-endorsed" ads over non-friend-endorsed ads. I have been asked by plaintiffs' counsel  
24 to provide my opinions regarding the argument that the relief provides the class members with  
25 something of real and direct economic value and to calculate that value.

26 11. Presently, Sponsored Stories ads feature apparent endorsements of Facebook users.  
27 The users are not made aware of what Sponsored Stories ads feature them and they do not have  
28

1 the ability to remove themselves from such ads or control the use of their endorsements in any  
2 manner. Facebook sells Sponsored Stories ads to its advertisers, who pay a premium price for  
3 the use of the friend endorsement feature. This premium is due to the superior performance  
4 endorsed ads have been shown to have from the advertisers' perspective. At present, Facebook  
5 is the only beneficiary of the additional revenue generated by Sponsored Stories ads. The  
6 users, who are unaware of the use of their endorsements, do not receive any share of this  
7 additional revenue. In essence, Facebook is selling users' endorsements while the users are  
8 unwittingly giving their endorsements away for free.

9 12. The injunctive relief changes the status quo by giving the users the ability to refuse  
10 Facebook the ability to use their endorsements for free. Once the injunctive relief is  
11 implemented, users will have the capability to see what Sponsored Stories ads feature their  
12 endorsements. In addition, Facebook users will have the capability to remove themselves from  
13 any or all Sponsored Stories featuring their endorsement. This takes the control of the users'  
14 endorsements from Facebook and puts it in the hands of the users.

15 13. At a first pass, it may appear that control of one's endorsement, such as that  
16 afforded by this injunctive relief does not confer upon the class members any real economic  
17 benefit because there is no widely-known marketplace where individuals can sell their  
18 endorsements to online advertisers. There is, however, substantial evidence that such a market  
19 is coming into being and in some cases already exists. The following examples illustrate this  
20 budding market:

- 21 a. Chime.in is an online social network owned by California-based UberMedia,  
22 Inc. that provides its users compensation from its ad revenue.<sup>1</sup> Users have the  
23 capability to create groups within the network that share similar interests. *Id.*

24 \_\_\_\_\_  
25 <sup>1</sup>David Zax, *Is Personal Data the New Currency?*, TECH. REV., Nov. 30, 2011, available at  
26 <http://www.technologyreview.com/view/426235/is-personal-data-the-new-currency/>; David  
27 Talbot, *A Social Network That Pays You*, TECH. REV., Nov. 8, 2011, available at <http://www.technologyreview.com/news/426064/a-social-network-that-pays-you/>; Tomio Geron,  
28 *UberMedia's Chime.in Interest Network Says It's Different From Twitter*, FORBES, Oct. 17,  
2011, available at <http://www.forbes.com/sites/tomiogeron/2011/10/17/ubermedias-chime-in-interest-network-says-its-different-from-twitter/>.

1 When such a group has been created, users can post advertisements that are  
2 shown to the group and relate to the common interests of the group, essentially  
3 giving their personal endorsement for the advertiser's product or service. *Id.*  
4 Chime.in splits 50 to 100 percent of an ad's revenue with the user who posted  
5 the ad. *Id.* This is an existing market for user endorsements in online social  
6 networks where users receive direct economic benefit in exchange for the use of  
7 their endorsement.

8 b. Allow Ltd. is a London-based company that contracts with individuals who are  
9 willing to sell information regarding themselves and their consumption  
10 preferences.<sup>2</sup> The company offers to sell this information on their customers'  
11 behalves to marketers, who in turn direct targeted advertisements to the  
12 customers using customers' information and preferences. *Id.* Allow Ltd. then  
13 compensates their customer with a monetary commission for the sale of the  
14 information. *Id.*

15 c. Personal, Inc., a Washington DC-based company, is developing services to  
16 allow private individuals to generate revenue by providing their personal  
17 information to advertisers, much like Allow Ltd.<sup>3</sup> Personal, Inc. collects  
18 information from willing customers then offers the information to businesses  
19 that wish to offer personalized products and advertising. Because the individual  
20 customers retain control over the information Personal stores, they can demand  
21 compensation in return. *Id.* The founder of Personal, Inc., Shane Green, has  
22 written "we believe companies that earn your business (and those who don't)

23  
24 <sup>2</sup> Julia Angwin & Emily Steel, *Web's Hot New Commodity: Privacy*, WALL ST. J., Feb. 27, 2011,  
25 available at [http://online.wsj.com/article/SB10001424052748703529004576160764037920274.html?mod=WSJ\\_Tech\\_LEAD](http://online.wsj.com/article/SB10001424052748703529004576160764037920274.html?mod=WSJ_Tech_LEAD)Top.

26 <sup>3</sup> Joshua Brustein, *Start-Ups Seek to Help Users Put a Price on Their Personal Data*, N.Y.  
27 TIMES, Feb. 12, 2012, available at [http://www.nytimes.com/2012/02/13/technology/start-ups-aim-to-help-users-put-a-price-on-their-personal-data.html?\\_r=2&ref=business&](http://www.nytimes.com/2012/02/13/technology/start-ups-aim-to-help-users-put-a-price-on-their-personal-data.html?_r=2&ref=business&); G.L., *A Life-Management Plaform?*, ECONOMIST, Nov. 17, 2011, available at <http://www.economist.com/blogs/babbage/2011/11/personal-data>.

1 will be willing to compensate individuals for having the chance to interact with  
2 qualified buyers of their particular good or service. This far more efficient  
3 marketplace can easily add up to thousands of dollars annually as people realize  
4 the full benefit of their data, time and purchases.”<sup>4</sup> Personal, Inc. has received  
5 attention for its business model from the New York Times, The Wall Street  
6 Journal, The Economist, AdAge, AdWeek, Forrester Research, MIT Tech  
7 Review, The Washington Post, the Harvard Business Review, and other  
8 publications.

- 9 d. William Hoffman, head of the World Economic Forum’s Telecommunications  
10 Industry Group and Information and Technology Industry Agenda Council was  
11 quoted in a February 2012 New York Times article predicting a marketplace  
12 where individuals can transact personal information and preferences in the very  
13 near future. “‘The killer app isn’t here yet,’” said [Hoffman]. But with increased  
14 consumer awareness of the value of that information — Facebook could be  
15 worth as much as \$100 billion — that may soon change. ‘I’m willing to bet that  
16 within the next 12 months something big will catch on,’ he said.”<sup>5</sup>
- 17 e. In 2010, an internal memo authored by a Google, Inc. senior product manager  
18 for internet-based advertising was leaked to The Wall Street Journal. The memo  
19 discussed the concept of creating a “platform” that would serve as a marketplace  
20 for users to exchange personal information. An excerpt of the memo read,  
21 “Google can build a data exchange / trading platform allowing individual data  
22 owners to transact with others directly, or openly sell their data to any bidders.”<sup>6</sup>

23  
24 <sup>4</sup> *What is Your Personal Data Really Worth*, POWER SHIFT, Feb. 13, 2012, available at  
<http://blog.personal.com/2012/02/what-is-your-personal-data-really-worth/>.

25 <sup>5</sup> Joshua Brustein, *Start-Ups Seek to Help Users Put a Price on Their Personal Data*, N.Y.  
26 TIMES, Feb. 12, 2012, available at [http://www.nytimes.com/2012/02/13/technology/start-ups-aim-to-help-users-put-a-price-on-their-personal-data.html?\\_r=2&ref=business&](http://www.nytimes.com/2012/02/13/technology/start-ups-aim-to-help-users-put-a-price-on-their-personal-data.html?_r=2&ref=business&)

27 <sup>6</sup> Jessica E. Vascellaro, *Google Agonizes on Privacy as Ad World Vaults Ahead*, WALL ST. J.,  
28 Aug. 9 2010, <http://online.wsj.com/article/SB10001424052748703309704575413553851854026.html>.



1 These are just a few examples that illustrate the growth of a market where individual users on  
2 an online social network will be compensated for the use of their information and endorsement  
3 in directed advertising.

4 14. Control over the use of one's endorsement has a real and direct economic value,  
5 especially in an online social network environment. As initially explored in my May 24, 2012  
6 Declaration, advertising that involves the name, image and likeness of a member of one's  
7 network of friends is more effective in the sense that the network members exposed to the  
8 endorsed ad are more likely to click on the ad and, ultimately, fulfill the advertisers' marketing  
9 goals than conventional or "standard" ads. Before online social networking and online  
10 advertising became prevalent, the use of celebrities was one of the tools available to marketers  
11 to make mass media advertisements more effective. Targeted online advertising does not need  
12 endorsers with mass appeal; rather, the familiarity with regular social network members makes  
13 narrowly targeted ads, specifically Facebook's Sponsored Stories ads, more effective than  
14 normal. The incremental revenue captured by online advertisers using "Friend" endorsements  
15 is the direct measure of the market value of the incremental efficacy of the ads that is  
16 attributable to the endorsement. The advertising website would be no worse-off by paying up  
17 to that incremental revenue amount to the members whose identities and actions are used in  
18 generating the ads, while users' control of this endorsement value, if control is granted as a  
19 result of the injunctive relief, has real economic value of up to that amount of incremental  
20 revenue. Directly, this amount is the market's assessment of the benefit derived by advertisers  
21 by pairing their marketing communications with the class members' identities ads such as  
22 Sponsored Stories ads.

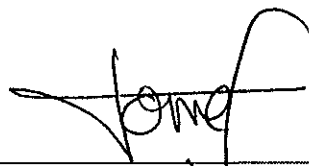
23 15. Using a sample of data in a previous declaration, I calculated the estimated actual  
24 value that the use of the class in Sponsored Stories ads contributed to Facebook's revenue in  
25 the year 2011 was approximately \$47 million (approximately \$4.3 million per month). I have  
26 been provided with up-to-date revenue figures for Sponsored Stories. Using the new revenue  
27 figures in my calculations, I conclude the additional revenue earned through user endorsements



1 is approximately \$179 million (approximately \$9.4 million per month). The injunctive relief  
2 agreed upon by the parties will remain unchanged for 2 years (or 24 months). Therefore, the  
3 injunctive relief provides the plaintiffs with control over an asset that will be worth  
4 approximately \$226 million over the proceeding 2-year period. This valuation, in my opinion,  
5 represents an appropriate measure of the value of the injunctive relief in this case.

6 16. Because Facebook will now be required to allow the class members control in  
7 determining when they will be featured in Sponsored Stories ads, as outlined in Paragraph 9  
8 above, the class members now have the opportunity to control the use of what is essentially a  
9 \$9.4 million/month advertising asset. Without this injunctive relief, it is my view that the class  
10 members would be denied the control of this asset. Therefore, assuming Facebook would  
11 continue to deny users the ability to benefit from the incremental revenue their use in  
12 Sponsored Stories ads generated for Facebook.

13 17. I declare under the penalty of perjury and under the laws of the United States of  
14 America that the forgoing is true and correct and based upon my personal knowledge and/or  
15 professional opinions, and that if called upon to testify, I could verify the accuracy of the same.  
16 This document was executed in the city of San Diego, California on October 3, 2012.

17  
18  
19  
20 By:   
21 \_\_\_\_\_  
22 Fernando Torres, MSc  
23  
24  
25  
26  
27  
28