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7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

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

15 Plaintiffs,

16 v.

17 FACEBOOK, INC., a corporation; and DOES
18 1-100,

19 Defendants.
20

Case No. CV 11-01726 RS

**DECLARATION OF MATTHEW D. BROWN
IN SUPPORT OF JOINT MOTION FOR
PRELIMINARY APPROVAL OF REVISED
SETTLEMENT**

DATE: October 25, 2012
TIME: 1:30 p.m.
DEPT.: 3
JUDGE: Hon. Richard Seeborg

1 I, Matthew D. Brown, declare as follows:

2 1. I submit this declaration in support of the Parties' Joint Motion for Preliminary
3 Approval of Revised Settlement ("Motion"). I am a partner with Cooley LLP, attorneys for
4 Facebook. I make this declaration based on personal knowledge and, if called upon to testify as a
5 witness, I could and would testify competently thereto.

6 2. In the fifteen months of litigation preceding settlement, the Parties engaged in
7 extensive discovery, propounding more than 1,000 discovery requests, producing more than
8 200,000 pages of documents and data, and conducting 21 depositions. Between them, the Parties
9 deposed 7 experts, the named Plaintiffs, and Facebook personnel knowledgeable about Sponsored
10 Stories and Facebook's systems, among other topics. Plaintiffs issued subpoenas to five third
11 parties.

12 3. Attached hereto as **Exhibit A** is a brief description of each of the *Cy Pres*
13 Recipients proposed by the Parties, including links to their websites and brief summaries of their
14 missions and projects as they relate to this litigation.

15 4. Attached hereto as **Exhibit B** is a true and correct copy of excerpts from the
16 transcript of the deposition of named Plaintiff Susan Mainzer, taken on December 20, 2011.

17 5. Attached hereto as **Exhibit C** is a true and correct copy of excerpts from the
18 transcript of the deposition of named Plaintiff James Duval, taken on December 13, 2011.

19 6. Attached hereto as **Exhibit D** is a true and correct copy of excerpts from the
20 transcript of the deposition of named Plaintiff W.T., taken on December 21, 2011.

21 7. Attached hereto as **Exhibit E** is a true and correct copy of excerpts from the
22 transcript of the deposition of Russell Tait, father and guardian ad litem of W.T., taken on
23 February 16, 2012.

24 8. Attached hereto as **Exhibit F** is a true and correct copy of excerpts from the
25 transcript of the deposition of former named Plaintiff Angel Fraley, taken on March 28, 2012.

26 9. Attached hereto as **Exhibit G** is a true and correct copy of excerpts from named
27 Plaintiff James Duval's Verified Responses to Defendant Facebook's Interrogatories, signed
28 October 18, 2011.

1 10. Attached hereto as **Exhibit H** is a true and correct copy of excerpts from named
2 Plaintiff W.T.'s Responses to Defendant's First Set of Interrogatories.

3 11. Attached hereto as **Exhibit I** is a true and correct copy of excerpts from named
4 Plaintiff Susan Mainzer's Responses to Defendant Facebook's Interrogatories, received by
5 Facebook on October 14, 2011.

6 12. Attached hereto as **Exhibit J** is a true and correct copy of excerpts from named
7 Plaintiff Susan Mainzer's Supplemental Responses to Defendant Facebook's Interrogatories,
8 received by Facebook on December 16, 2011.

9 13. Attached hereto as **Exhibit K** is a true and correct copy of an excerpt of a
10 document produced by Facebook to Plaintiffs in this litigation, Bates-numbered
11 FB_FRA_000021428. I understand that the document was generated by Facebook from named
12 Plaintiff Susan Mainzer's account records on November 18, 2011. It depicts content on Facebook
13 that she "Liked" from November 8, 2011 to November 17, 2011.

14 14. Attached hereto as **Exhibit L** is a true and correct copy of a document introduced
15 as Exhibit 1010 at the deposition of named Plaintiff James Duval on December 13, 2011, and
16 produced to Facebook in this litigation, Bates-numbered FACEBOOK 000041 to FACEBOOK
17 000078. It depicts profile pictures uploaded to James Duval's Facebook account.

18 15. Attached hereto as **Exhibit M** is a true and correct copy of a document introduced
19 as Exhibit 1037 at the deposition of former named Plaintiff Angel Fraley on March 28, 2012,
20 which depicts profile pictures of twenty-one of Angel Fraley's Facebook Friends.

21 16. Attached hereto as **Exhibit N** is a true and correct copy of Exhibit 1039 from the
22 deposition of former named Plaintiff Angel Fraley on March 28, 2012, which is a printout from
23 Angel Fraley's Timeline on Facebook. It depicts the content on Facebook that Ms. Fraley
24 "Liked" in calendar year 2011.

25 17. Attached hereto as **Exhibit O** is a true and correct copy of a document introduced
26 as Exhibit 1042 at the deposition of former named Plaintiff Angel Fraley on March 28, 2012, and
27 produced to Facebook in this litigation, Bates-numbered FACEBOOK 006552. It depicts
28 Facebook messages between Angel Fraley and a Friend.

1 18. Attached hereto as **Exhibit P** is a true and correct copy of a document introduced
2 as Exhibit 1050 at the deposition of former named Plaintiff Angel Fraley on March 28, 2012, and
3 produced to Facebook in this litigation, Bates-numbered FACEBOOK 006229 to FACEBOOK
4 006251. It depicts a list of Angel Fraley's Facebook Friends.

5 19. Attached hereto as **Exhibit Q** is a true and correct copy of Children's Online
6 Privacy Protection Act, S. 2326, 105th Cong. (as introduced on July 17, 1998).

7 20. Attached hereto as **Exhibit R** is a true and correct copy of excerpts from the
8 Congressional Record of the 105th Congress, Second Session (Senate), 144 Cong. Rec. S12785-
9 89 (daily ed. Oct. 21, 1998) (statement of Sen. Bryan).

10 21. Attached hereto as **Exhibit S** is a true and correct copy of the Testimony of the
11 Federal Trade Commission before the Subcommittee on Consumer Protections, Product Safety,
12 and Insurance, July 15, 2010.

13 22. Attached hereto as **Exhibit T** is a true and correct copy of the Hearing on S. 2326
14 Before the Communications of the Subcommittee on Commerce, Science, and Transportation,
15 United States Senate, 105th Cong. 46 (1998) (statements of the Center for Democracy and
16 Technology, American Library Association, and Time Warner, Inc.).

17 23. Attached hereto as **Exhibit U** is a true and correct copy of the First Master Class
18 Action Complaint filed in *David Cohen v. Facebook, Inc.*, Case No. BC 444482 (L.A. Super Ct.)
19 on July 5, 2011. The unsuccessful *David Cohen* case was brought by attorneys and law firms that
20 have also appeared as counsel of record in *C.M.D. v. Facebook, Inc.*, No. 12-cv-01216 RS (N.D.
21 Cal.) ("*C.M.D.*"), which is also pending before this Court. (*Compare Exhibit U* (caption & page
22 22), *with C.M.D.* Dkt. Nos. 35 (reflecting appearance of Mark Tamblyn), 38 (Ian Barlow), 65
23 (Edward A. Wallace of Wexler Wallace LLP), 76 (Lee Squitieri), 84 (Garry Stevens), 101
24 (Antony Stuart), 103 (John Torjesen).)

25 24. Attached hereto as **Exhibit V** is a true and correct copy of Judge Debre
26 Weintraub's Order on Facebook's demurrer to the complaint in *David Cohen v. Facebook, Inc.*,
27 Case No. BC 444482, dated September 22, 2011.

28 25. Attached hereto as **Exhibit W** is a true and correct copy of excerpts from the

1 deposition of Plaintiffs' expert, Fernando Torres, taken on April 11, 2012.

2 26. Attached hereto as **Exhibit X** is a true and correct copy of an article from USA
3 Today.com, accessible at [http://www.usatoday.com/tech/news/2011-01-31-](http://www.usatoday.com/tech/news/2011-01-31-facebook31_ST_N.htm#)
4 [facebook31_ST_N.htm#](http://www.usatoday.com/tech/news/2011-01-31-facebook31_ST_N.htm#), last updated on January 30, 2011, and last accessed on October 5, 2012.

5 27. Attached hereto as **Exhibit Y** is a true and correct copy of an article from The
6 Washington Post.com, accessible at
7 http://voices.washingtonpost.com/fasterforward/2011/01/facebook_sponsored_stories_tur.html,
8 last updated on January 27, 2011, and last accessed on October 5, 2012.

9 28. Attached hereto as **Exhibit Z** is a true and correct copy of an article from The San
10 Francisco Chronicle, accessible at [http://www.sfgate.com/cgi-](http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2011/01/25/BU361HE35D.DTL)
11 [bin/article.cgi?f=/c/a/2011/01/25/BU361HE35D.DTL](http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2011/01/25/BU361HE35D.DTL), last updated on January 26, 2011, and last
12 accessed on October 5, 2012.

13 29. Attached hereto as **Exhibit AA** is a true and correct copy of an article from
14 CNN.com, accessible at <http://www.cnn.com/2011/11/21/tech/social-media/facebook-ads-ticker>,
15 last updated on November 21, 2011, and last accessed on October 5, 2012.

16 30. Attached hereto as **Exhibit BB** is a true and correct copy of an article from The
17 New York Times Media Blog, accessible at <http://mobile.nytimes.com/article?a=883723&f=92>,
18 last updated on December 22, 2011, and last accessed on October 5, 2012.

19 31. Attached hereto as **Exhibit CC** is a true and correct copy of an article from
20 Forbes.com, accessible at [http://www.forbes.com/sites/roberthof/2011/09/22/facebooks-big-](http://www.forbes.com/sites/roberthof/2011/09/22/facebooks-big-changes-whats-in-it-for-advertisers/)
21 [changes-whats-in-it-for-advertisers/](http://www.forbes.com/sites/roberthof/2011/09/22/facebooks-big-changes-whats-in-it-for-advertisers/), last updated on September 22, 2011, and last accessed on
22 October 5, 2012.

23 32. Attached hereto as **Exhibit DD** is a true and correct copy of an article from ABC
24 News.com, accessible at [http://abcnews.go.com/Technology/facebook-put-sponsored-ads-](http://abcnews.go.com/Technology/facebook-put-sponsored-ads-timeline-newsfeed-january-2012/story?id=15205346#.T3toDas7WAg)
25 [timeline-newsfeed-january-2012/story?id=15205346#.T3toDas7WAg](http://abcnews.go.com/Technology/facebook-put-sponsored-ads-timeline-newsfeed-january-2012/story?id=15205346#.T3toDas7WAg), last updated on December
26 21, 2011, and last accessed on October 5, 2012.

27 33. Attached hereto as **Exhibit EE** is a true and correct copy of an article from The
28 Chicago Daily Herald, accessible at

1 <http://www.dailyherald.com/article/20120317/business/703179987/>, last updated on March 17,
2 2012, and last accessed on October 5, 2012.

3 34. Attached hereto as **Exhibit FF** is a true and correct copy of a document entitled
4 “The Kids are Alright: A Survey of the privacy habits and preferences of teens and their parents
5 on social networks,” accessible at http://www.truste.com/pdf/TRUSTe_SNS_shortdeck.pdf, last
6 accessed on October 5, 2012, Bates-numbered FB_FRA_000159131, which was provided to
7 Plaintiffs during the course of this litigation.

8 35. Attached hereto as **Exhibit GG** is a true and correct copy of an article entitled
9 “Most Parents Monitor Kids on Facebook And Have Their Passwords,” accessible at
10 <http://mashable.com/2012/01/13/parents-monitoring-facebook/>, last accessed on October 5, 2012.

11 36. Attached hereto as **Exhibit HH** is a true and correct copy of an article entitled
12 “Why parents help their children lie to Facebook about age: Unintended consequences of the
13 ‘Children’s Online Privacy Protection Act,’” accessible at
14 <http://www.uic.edu/htbin/cgiwrap/bin/ojs/index.php/fm/article/viewArticle/3850/3075>, last
15 accessed on October 5, 2012.

16 37. Attached hereto as **Exhibit II** is a true and correct copy of a page from Facebook’s
17 Help Center, entitled “What is the Facebook Safety Advisory Board, and what does this board
18 do?,” accessible at <http://www.facebook.com/help/?faq=222332597793306>, last accessed on
19 October 5, 2012.

20 38. Attached hereto as **Exhibit JJ** is a true and correct copy of excerpts from
21 Facebook’s Amendment No. 4 to its Form S-1 Registration Statement with the Securities and
22 Exchange Commission.

23 39. Attached hereto as **Exhibit KK** is a true and correct copy of the Declaration of
24 Fernando Torres in support of Plaintiffs’ Motion for Class Certification, dated March 28, 2012.

25 40. Attached hereto as **Exhibit LL** is a working mockup (“Activity Log View of
26 Content Featured in Sponsored Stories”) to illustrate how this aspect of the injunctive relief may
27 be implemented on the Facebook website.

28 41. Attached hereto as **Exhibit MM** is a working mockup (“Parental Tool for Opting

1 Children Out of Sponsored Stories”) to illustrate how this aspect of the injunctive relief may be
2 implemented on the Facebook website.

3 42. Attached hereto as **Exhibit NN** is a working mockup (“Profile Setting for Minor
4 Users re: Parents on Facebook”) to illustrate how this aspect of the injunctive relief may be
5 implemented on the Facebook website.

6 43. Attached hereto as **Exhibit OO** is a working mockup (“Messaging for New Users
7 re: Connecting with Family Members”) to illustrate how this aspect of the injunctive relief may
8 be implemented with respect to Facebook’s messaging to new Users.

9 44. The following portions of the Exhibits hereto support the point of argument made
10 in Facebook’s Memorandum of Points and Authorities in Support of Joint Motion for Preliminary
11 Approval of Revised Settlement for which this declaration paragraph is cited:

- 12 a. Ex. B (Mainzer Tr.) 139:5-23;
- 13 b. Ex. C (Duval Tr.) 209:14-22;
- 14 c. Ex. D (W.T. Tr.) 137:12-14;
- 15 d. Ex. F (Fraley Tr.) 126:21-127:6;
- 16 e. Ex. K (Mainzer Account) FB_FRA_000021428; and
- 17 f. Ex. N (Fraley Depo. Ex.) 1039.

18 45. The following portions of the Exhibits hereto support the point of argument made
19 in Facebook’s Memorandum of Points and Authorities in Support of Joint Motion for Preliminary
20 Approval of Revised Settlement for which this declaration paragraph is cited:

- 21 a. Ex. C (Duval Tr.) 94:25-95:8.

22 46. The following portions of the Exhibits hereto support the point of argument made
23 in Facebook’s Memorandum of Points and Authorities in Support of Joint Motion for Preliminary
24 Approval of Revised Settlement for which this declaration paragraph is cited:

- 25 a. Ex. C (Duval Tr.) 94:25-95:8, 204:24-205:19, 212:2-214:18.

26 47. The following portions of the Exhibits hereto support the point of argument made
27 in Facebook’s Memorandum of Points and Authorities in Support of Joint Motion for Preliminary
28 Approval of Revised Settlement for which this declaration paragraph is cited:

- 1 a. Ex. D (W.T. Tr.) 28:13-29:22, 31:6-32:20; and
- 2 b. Ex. E (R. Tait. Tr.) 32:18-39:14.

3 48. The following portions of the Exhibits hereto support the point of argument made
4 in Facebook's Memorandum of Points and Authorities in Support of Joint Motion for Preliminary
5 Approval of Revised Settlement for which this declaration paragraph is cited:

- 6 a. Ex. E (R. Tait. Tr.) 105:8-107:20.

7 49. The following portions of the Exhibits hereto support the point of argument made
8 in Facebook's Memorandum of Points and Authorities in Support of Joint Motion for Preliminary
9 Approval of Revised Settlement for which this declaration paragraph is cited:

- 10 b. Ex. D (W.T. Tr.) 119:22-120:17; and
- 11 c. Ex. E (R. Tait. Tr.) 43:7-46:6.

12 50. The following portions of the Exhibits hereto support the point of argument made
13 in Facebook's Memorandum of Points and Authorities in Support of Joint Motion for Preliminary
14 Approval of Revised Settlement for which this declaration paragraph is cited:

- 15 a. Ex. B (Mainzer Tr.) 97:4-13;
- 16 b. Ex. C (Duval Tr.) 162:3-14, 164:25-165:8, 166:11-17, 168:17-23;
- 17 c. Ex. D (W.T. Tr.) 67:11-68:22; and
- 18 d. Ex. F (Fraley Tr.) 305:15-21, 308:2-4.

19 51. The following portions of the Exhibits hereto support the point of argument made
20 in Facebook's Memorandum of Points and Authorities in Support of Joint Motion for Preliminary
21 Approval of Revised Settlement for which this declaration paragraph is cited:

- 22 a. Ex. C (Duval Tr.) 163:21-164:4, 166:11-167:8, 168:2-16; and
- 23 b. Ex. L (Duval Depo. Ex.) 1010.

24 52. The following portions of the Exhibits hereto support the point of argument made
25 in Facebook's Memorandum of Points and Authorities in Support of Joint Motion for Preliminary
26 Approval of Revised Settlement for which this declaration paragraph is cited:

- 27 a. Ex. F (Fraley Tr.) 65:6-83:18; and
- 28 b. Ex. M (Fraley Depo. Ex.) 1037.

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ATTESTATION (CIVIL LOCAL RULE 5-1(i)(3))

In accordance with Civil Local Rule 5-1(i)(3), I attest that concurrence in the filing of this document has been obtained from the signatory.

Dated: October 5, 2012

COOLEY LLP

/s/ Michael G. Rhodes
Michael G. Rhodes

Attorneys for Defendant Facebook, Inc.

1288032/SF