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15 Attorneys for Plaintiffs

16 UNITED STATES DISTRICT COURT  
17 NORTHERN DISTRICT OF CALIFORNIA  
18 SAN FRANCISCO DIVISION

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

26 Plaintiffs,

27 v.

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

Defendants.

**Case No. 11-CV-01726 RS**

**DECLARATION OF ROBERT S.  
ARNS IN SUPPORT OF  
MOTION FOR  
ATTORNEYS' FEES AND  
COSTS AND CLASS  
REPRESENTATIVES' SERVICE  
AWARDS**

Date: June 28, 2013

Time: 10:00 a.m.

Courtroom: 3

Judge: Hon. Richard Seeborg

1 I, ROBERT S. ARNS, hereby declare the following:

2 1. I am an attorney licensed to practice before all the Federal and State courts located  
3 in the State of California and am a principal in The Arns Law Firm, one of the attorneys for  
4 Plaintiffs herein. I make this Declaration in Support of Plaintiffs' Motion for Award of  
5 Attorneys' Fees and Costs and Class Representative Awards.

6 2. I have been actively and personally involved in every aspect of this litigation as lead  
7 counsel since its inception. This includes (1) preparing for taking and defending virtually all of  
8 the twenty-one depositions in this case, (2) preparing and overseeing written discovery, (3)  
9 overseeing all pleadings and participation in preparation of every brief, (4) conducting all  
10 settlement discussions and negotiations of all issues in the case, including preparing a 28 page  
11 executive mediation brief and a 231 page comprehensive settlement conference brief, (5)  
12 communication with the clients and opposing lawyers, (6) conducting frequent meetings with  
13 the plaintiff team to develop strategies for each phase of the case and to divide up assignments,  
14 (7) selection of and preparation of experts, (8) appearing as lead counsel at each court  
15 appearance in this case, (9) reviewing a massive number of documents produced by Facebook,  
16 (10) maintaining an organized front for every aspect of the case, and (11) constantly  
17 monitoring every detail of the case. In 36 years of practice, I have never spent this much  
18 continuous time on any single matter in my office, except for the periods when I was trying a  
19 case.

20 3. The risks of going forward with the litigation of this matter from the Plaintiffs'  
21 perspective include the usual hazards of trial, as well as defenses that would have required  
22 significant motion practice and effort to overcome. The settlement, memorialized in the  
23 Amended Settlement Agreement ("A.S.A.", a true and correct copy of which is Exhibit 1 to my  
24 Declaration in support of Preliminary Approval), provides for significant injunctive relief,  
25 which addresses the problems identified by Plaintiffs: lack of informed consent to the use of  
26 their names and likenesses in advertisements. This case should serve to set guidelines for the  
27 ever increasing use of online marketing that uses "friend endorsements," such that it will be in  
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1 harmony with the right of publicity generally and specifically under California Civil Code  
2 section 3344. Further, with a common fund of \$20,000,000.00, out of which a substantial  
3 portion (at least \$12 million, which is in excess of the \$10 million dedicated previously) will  
4 either be distributed to the Class or be directed as *cy pres* funds available to monitor right of  
5 publicity and privacy issues in online marketing, the Class will be well protected in the future.  
6 Class Counsel has demonstrated a high degree of competence in the litigation of this case and  
7 strongly believes that the Settlement is a fair, adequate, and reasonable resolution of the  
8 Settlement Class's disputes with Facebook and is preferable to continued litigation.  
9 Accordingly, The Arns Law Firm and Jonathan Jaffe Law are seeking their attorneys' fees in  
10 the amount of \$7,500,000.00 and their costs of \$282,566.49, which will come out of the  
11 common fund. They also seek service awards for the three class representatives, in the amount  
12 of \$12,500 each, in recognition of their time and effort in responding to discovery, including  
13 having their depositions taken, as well as commitment to prosecuting this case despite being  
14 exposed to the risk of attorneys' fees and costs if Facebook were to prevail.

#### 15 **I. SETTLEMENT NEGOTIATIONS**

16 4. The parties began litigating the case in March 2011, including substantial discovery  
17 as detailed more fully below that entailed twenty-one depositions, two motions to dismiss, the  
18 briefing of a motion for class certification. The Hon. Edward A. Infante (Ret.), the former  
19 Chief Magistrate Judge of the United States District Court for the Northern District of  
20 California, was the mediator in this case and supervisor of continuing settlement discussions.  
21 The Parties ultimately reached the initial proposed settlement during the pendency of the  
22 Motion for Class Certification. Plaintiffs then moved for preliminary approval of the proposed  
23 Settlement, which was denied without prejudice by the Court on August 17, 2012. Plaintiffs  
24 and Facebook, in response to the denial and the Court's Order, entered into further  
25 negotiations, which resulted in an Amended Settlement Agreement. The injunctive relief is  
26 now even more robust, including an "opt-out" function for the parents of minors. Other  
27 modifications include a \$20 million settlement fund, with no reversion to Facebook, and no  
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1 “clear sailing” agreement as to Class Counsel’s attorneys’ fees. The parties will attempt to  
2 distribute the lion’s share of the \$20 million to the Class members, with approximately \$12  
3 million directed to them, minus administrative and other costs. In the event that the claims rate  
4 is such that less than \$5 per member is available, then the Court has discretion to direct the  
5 monies to the *cy pres* recipients previously put forward by the Parties on the last motion as the  
6 claims administration costs could be prohibitive.

7 5. The Parties engaged in extensive discovery in order to evaluate the relative strength  
8 of the Parties’ claims and defenses, including written discovery, document production and  
9 depositions of Facebook personnel and experts. Plaintiffs requested and obtained substantial  
10 information concerning the practices that are the subject of this lawsuit.

11 6. The Settlement Agreement provides the following benefits: There is a \$20 million  
12 settlement fund, with no reversion to Facebook, and no “clear sailing” agreement as to Class  
13 Counsel’s attorney’s fees. Should the claims rate exceed the point where it is feasible to  
14 provide all claimants \$10, the payment amount will be adjusted pro rata to the point where it is  
15 economically feasible. Previously the clear sailing agreement was for \$10 million in fees, but  
16 class counsel was only going to request \$7.5 million in fees. Because this is now all part of a  
17 \$20 million settlement with no reversion, the benefit to the class has increased under the A.S.A.  
18 by roughly \$2.5 million, and the Class members stand to potentially receive nearly \$12 million.

19 7. Under the Settlement Agreement, the balance of the \$20 million fund after  
20 attorneys’ fees and costs, incentive awards, and settlement administration and notice costs, will  
21 be made available on a claims-made basis for distribution to Class members, starting at a rate  
22 of \$10 per claiming Class member and being adjusted pro rata should the claims rate be  
23 relatively high. In the event that the claims rate is falls below \$5 per claimant, the Parties have  
24 designated *cy pres* recipients. These recipients are entities which have been and are engaged in  
25 activities which will benefit the entire Class as well as the public at large, as they will advocate  
26 for issues such as the right of protection of the Class members’ right of publicity on the internet  
27 and specifically on social media websites. The *cy pres* recipients also include entities that are  
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1 dedicated to the protection of the rights and welfare of minor children, as they are affected by  
2 social media in an online context. *See* A.S.A. § 2.4(a).

3 8. The proposed injunctive relief will provide significant benefits to the Class Members  
4 (as well as future Facebook members) and includes changes to Facebook’s website. These  
5 changes will remain in place for at least two (2) years, and among other things, will make it  
6 clear to all persons with Facebook accounts (“Users”) and the parents or legal guardians of  
7 minor Users that their names and likenesses may be used in “Sponsored Stories” ads. A.S.A §  
8 2.1.

9 9. In total, the injunctive relief now includes relief in the form of (1) a revision of the  
10 Facebook terms (Statement of Rights and Responsibilities, or “SRR”), section 10.1 that  
11 clarifies to users that they give Facebook permission to use their name and likeness in  
12 Sponsored Stories ads; (2) a mechanism that will allow users to see which actions they have  
13 taken that have led to their being featured in Sponsored Stories ads and control whether those  
14 actions continue being eligible to appear as Sponsored Stories ads; (3) additional provisions  
15 requiring that Users under 18 years of age represent that they have received parental consent to  
16 be featured in Sponsored Stories ads; (4) additions to Facebook’s “Family Safety Center” that  
17 explain Sponsored Stories ads and enable parents to prevent their children from being featured  
18 in Sponsored Stories ads; (5) additional information shown to users upon joining, or soon  
19 thereafter, encourage new users to include in their profile relationships, including parents and  
20 children, and if a confirmed parent-child relationship is established, the parents will be able to  
21 use the control mentioned above through their own Facebook accounts; (6) additional  
22 educational materials regarding how Facebook advertising works to the ‘parents’ section of the  
23 Family Safety Center; (7) the creation and display of advertising to Users with a confirmed  
24 parental relationship with a minor user, directing them to the Family Safety Center, and/or  
25 other parent-specific resources on Facebook, and; (8) an opportunity for Plaintiffs’ counsel to  
26 review Facebook’s website materials regarding advertising and ensure that Sponsored Stories  
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1 are clearly identified as ads, with the right to move the Court to call for an independent audit  
2 (for which Facebook will pay) if necessary. A.S.A. § 2.1.

3 10. I believe that the proposed Settlement is fair and reasonable, and provides relief  
4 which directly addresses the problems identified in the Complaint and through discovery. The  
5 Settlement provides for substantial monetary and injunctive relief for the Class, including  
6 return of all the wrongly assessed late fees with interest.

7 **II. VALUATION OF THE RELIEF TO THE CLASS AS MEASURED BY**  
8 **EXPERT TESTIMONY**

9 11. The relief to the Class, as detailed in the Joint Motion on Preliminary Approval,  
10 includes \$20 million total funds, out of which at least \$12.5 million will be made available for  
11 claims by Class members. The Amended Settlement Agreement also includes substantial  
12 injunctive relief, valued at \$226,000,000 by Fernando Torres and \$57-145 million by Phillip  
13 Allman, as discussed below.

14 12. Plaintiffs retained and consulted with several experts. Their expertise was necessary  
15 to the litigation and trial preparation in this case. Attached hereto as Exhibit 1 are their bills.

16 13. Plaintiffs contended on class certification that their actual damages were the  
17 additional revenue created by the Class Member's appearance in ad campaigns. This amount  
18 can be calculated using the Click-Through Rate ("CTR"), a ratio Facebook tracks and records.  
19 Declaration of Kevin M. Osborne submitted on class certification (a true and correct copy of  
20 his declaration is Exhibit 4 to the Declaration of Robert S. Arns in support of the Joint Motion  
21 for Preliminary Approval of Class Action Settlement ["Arns Preliminary Approval  
22 Declaration"].) [Ex. 2 thereto, Plambeck Dep., 104:15-20]. The CTR is the ratio of the number  
23 of times an ad is clicked to the total number of times the ad is shown. For example, a 0.2%  
24 CTR would mean the ad was clicked on twice in a thousand showings, or "impressions."  
25 Plaintiffs' experts David Taber and Fernando Torres, who have extensive experience in online  
26 advertising, confirmed that CTR is the most commonly used and consistent metric employed by  
27 advertisers when valuing online ad campaigns. True and correct copies of Taber's Declaration  
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1 submitted on class certification is Exhibit 5 to the Arns Preliminary Approval Declaration; a  
2 true and correct copy Torres's Declaration submitted on class certification is Exhibit 7 thereto,  
3 Torres Decl. ¶¶ 8d-f. Clicking on an ad is thus a good signal that the ad is relevant to the user.  
4 A more "relevant" ad is one that is, by the fact that it gets the user's attention, more effective;  
5 effective ads are what advertisers pay for. Declaration of Plaintiffs' marketing expert Gary  
6 Frazier (a true and correct copy of Frazier's declaration on class certification is Exhibit 6 to the  
7 Arns Preliminary Approval Declaration.)

8 14. Plaintiffs' statistical expert Dr. Richard Drogin provided testimony showing that he  
9 can calculate an average CTR for Standard Ads. Drogin's Declaration on Class Certification (a  
10 true and correct copy is Exhibit 8 to the Arns Preliminary Approval Declaration) states that  
11 relevant CTR for Standard Ads campaigns (using a statistically similar population as that to  
12 which Sponsored Stories ads were shown during the same period) can be calculated from the  
13 data that Facebook maintains. Drogin Decl. ¶¶ 5-16. Once an average CTR for Standard Ads  
14 is determined, the formula above can be used to calculate the "added value" of the friend  
15 endorsement. That added value can then be apportioned on a class-wide, per-plaintiff, or per-  
16 ad campaign basis. Drogin Decl. ¶ 15.

17 15. Plaintiffs in the Joint Motion expanded their explanation of the ways to value the  
18 injunctive relief in this case. Fernando Torres, an economics expert and principal of IP  
19 Metrics, a consulting company based in San Diego, California, created a formula that Plaintiffs  
20 contended could be used to calculate the value of the "friend endorsement" and hence the class  
21 members' damages for purposes of the class certification motion in this case. Mr. Torres is an  
22 expert in the valuation of rights to publicity. In this case, he developed a method for  
23 determining the value of the class's damages by reviewing hundreds of pages of documents,  
24 authoring an extensive declaration explaining two possible valuation methods, preparing for  
25 and giving a seven hour deposition, and authoring a rebuttal declaration to the declaration and  
26 deposition of Facebook expert Dr. Randolph Bucklin. For the purposes of Plaintiffs' Motion  
27 for Preliminary Approval of Class Action Settlement, Mr. Torres provided a declaration  
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1 concurrent with this motion addressing the value of Plaintiffs' injunctive relief. He concluded  
2 that the value of the injunctive relief is approximately \$226,000,000 for the first two years of  
3 injunctive relief (24 months). Mr. Torres' declaration was submitted separately in support of  
4 the Joint Motion.

5 16. Plaintiffs offered the Court an alternative method for valuing the injunctive relief  
6 based on "real option valuation" methodology of Plaintiffs' Expert Phillip Allman, whose  
7 Declaration is submitted separately in support of the Joint Motion. Dr. Allman is a  
8 professional economist and the founder of Allman & Petersen Economics, LLC. He holds a  
9 Ph.D. in economics from Michigan State University and was a professor of economics at the  
10 University of the Pacific. He has published articles on topics such as forecasting interest rates  
11 and wage growth, and valuing pensions for divorce proceedings. Dr. Allman finds the value  
12 of the injunctive relief can be appropriately measured using Mr. Torres's formula, but also  
13 states an alternative valuation based on the concept that the users are given a real option by  
14 way of the injunctive relief that is, unto itself, something of real and direct economic value to  
15 them. The class members in this case are given the right to exercise an option to withhold the  
16 use of their endorsements from Sponsored Stories ads. This right has a real economic value  
17 because there is a growing market for individual endorsements in online social media. Thus,  
18 class members will soon have (and in some cases already have) the ability to sell their  
19 endorsements and profit from the revenue generated by online advertising and this relief gives  
20 the class members control over the use of that asset. Dr. Allman places the value of the option  
21 provided by the injunctive relief changes in the range of \$57 to \$145 million.

22 17. The claims and recovery achieved support this application for attorney's fees  
23 pursuant to California Code of Civil Procedure, section 1021.5. The Arns Law Firm and  
24 Jonathan Jaffe Law are seeking combined fees in the amount of \$7,500,000 and litigation  
25 costs, which are \$282, 566.49 out of the \$20 million common fund. The costs of notice and  
26 administration will also be taken out of the common fund. Class Counsel is not seeking any  
27 recovery for the hundreds of hours expended by The Arns Law Firm legal assistants. A staff  
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1 of several highly skilled professionals provided critical support in promulgating and reviewing  
2 discovery, among other tasks which were delegated to save attorney time. These hours spent  
3 made the hours logged by the attorneys more efficient and allowed them to reduce the total  
4 number of attorney hours in the case. Thus, the Class received excellent value from the  
5 representation without being asked to pay separately for the assistant's time.

### 6 **III. CLASS COUNSELS' EXPERIENCE AND CREDENTIALS**

7 18. I, Robert S. Arns, have been in practice for 36 years in San Francisco, representing  
8 only plaintiffs in civil matters. I founded The Arns Law Firm in 1996; it currently has nine  
9 lawyers. The firm's case inventory, which includes catastrophic injury and death cases coupled  
10 with class action cases, is a perfect mixture of inspiring cases that creates a well-funded firm  
11 that allows us to fulfill our fiduciary duties to our clients with the highest standard of care. A  
12 copy of my curriculum vitae is Exhibit 2 hereto.

13 19. I have tried over 60 cases to a jury verdict. My Class Action experience includes a  
14 total of approximately fifteen matters, most of which involved California's Unfair Competition  
15 Law, Business & Professions Code section 17200 (one of the claims in this case), and the  
16 related Consumer Legal Remedies Act, Civil Code section 1750 et seq., as well as other claims  
17 under California State and Federal law. We are proud that The Arns Law Firm approaches  
18 each case (including class cases) the same way: initiating discovery immediately after filing the  
19 case so that we can discover the facts early and work to an expeditious resolution, either by trial  
20 or settlement. I have taught (and continue to teach) trial practice at the University of San  
21 Francisco School of Law for the last nine years, and was named Professor of the Year in 2011  
22 and Alumni of the Year in 2009. I am the author of the best-selling trial publications *The*  
23 *Evidence Wheel* and *The Trial Wheel*—both California and Federal versions—published by The  
24 Rutter Group, a division of West Publishing. I have chaired and participated in many Rutter  
25 Group seminars and numerous other seminars involving trial practice, class actions, evidence  
26 and related subjects, many times each year. I have been the Trial Lawyer of the Year (and  
27 finalist many times) for the San Francisco Trial Lawyers Association and was a finalist three  
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1 times for Consumer Attorneys Of California's (the largest plaintiff bar in the United States)  
2 Trial Lawyer of the Year. As an American Board of Trial Advocates member, I have presented  
3 the ABOTA Masters in Trial on numerous occasions in both Northern and Southern California.  
4 I have been asked to be a presenter the ABOTA Masters in Trial again in 2012. I have a total  
5 of 3261.10 hours on this case. My billing rate is \$950 per hour.

6 20. The Arns Law Firm consists of nine attorneys, five of whom, myself, Jonathan  
7 Davis, Steven Weinmann, Kevin Osborne and Robert Foss, work on class action cases as a  
8 significant amount of their practices. My practice is largely devoted to, and Mr. Weinmann's  
9 practice is devoted almost entirely to, the litigation of class action cases, and the law firm also  
10 handles numerous other significant cases including personal catastrophic injury and death  
11 actions, all for plaintiffs.

12 21. The Arns Law Firm concluded two other class action cases during the pendency of  
13 this lawsuit, and continues to litigate a third, complex action involving some 64 clients. The  
14 firm is also litigating with other firms four separate class actions against skilled nursing facility  
15 chains for failure to provide legally mandated care requirements for patients requiring skilled  
16 nursing care. Those lawsuits aim to increase the level of care provided to residents in skilled  
17 nursing facilities. I myself along with Jonathan Davis and Steven Weinmann litigated a class  
18 action against Home Depot and a related company for wage and hour claims, which resulted in  
19 a multi-million dollar settlement. We have litigated other wage and hour cases.

20 22. The firm has also been engaged in significant appeals of cases on issues of employer  
21 liability in the workplace. The firm also has a pending appeal before the California Supreme  
22 Court on the issue of putative spouse recovery in wrongful death matters. I have argued cases  
23 in front of the California Supreme Court, California Courts of Appeal and the Ninth Circuit.

24 23. A true and correct copy of the curriculum vitae of Jonathan E. Davis, a shareholder  
25 in The Arns Law Firm, is attached as Exhibit 3. Mr. Davis is a seasoned trial lawyer and has  
26 resolved several class action matters, including wage and hour claims class actions.

1 24. The Arns Law Firm during the litigation of this case consisted of eight attorneys, five  
2 of whom, Robert Arns, Jonathan Davis, Steven Weinmann, Kevin Osborne and Robert Foss  
3 worked on class action cases as a significant amount of their practices. Only Mr. Weinmann's  
4 practice is devoted almost entirely to class action cases, and I also handle concurrently  
5 approximately 30 significant personal injury cases at any given time. I was precluded from  
6 taking on other potentially lucrative personal injury matters due to the time commitment  
7 involved in the class cases. Also, any time Mr. Weinmann spent on this matter, directly  
8 impeded his ability to take on additional class action matters or to devote more of his time to  
9 the other complex and class action matters pending in the office at the same time.

10 25. All class action attorneys at the Arns Firm were also engaged in the litigation of a  
11 significant class action suit commenced in 2010 and pending in the Northern District of  
12 California against a major bank, involving UCL and Consumer Legal Remedies Act (Cal.  
13 Civil Code § 1750 et seq.) claims. These attorneys are also engaged in the litigation of a large  
14 class action suit filed in 2009 and pending in Superior Court of Los Angeles, California  
15 against a legal services internet provider, also involving UCL and CLRA claims. Court  
16 approval of the settlement was achieved, and the case is now on appeal.

17 26. The Arns Law Firm was also involved (together with co-counsel) in five significant  
18 class actions in state and federal court during the course of this litigation alleging understaffing  
19 violations at skilled nursing facilities in California. Four of those cases have settled, the other  
20 is in the discovery and pleading challenges stage. The firm is also litigating, with one other  
21 firm as co-counsel, a complex action involving some 55 clients.

22 27. Class Counsel was willing to take this action on, despite evidence that Facebook has  
23 litigated numerous other suits vigorously, because they had a reasonable expectation that they  
24 would receive a risk enhancement if they prevailed. No public agency was enforcing the rights  
25 of publicity laws against Defendants. At the time we filed suit, we were aware of no other  
26 actions as to Sponsored Stories (and indeed there were none which expressly targeted them).

1 28. Jonathan E. Davis is a partner at The Arns Law Firm. Jonathan has a total of 384.90  
2 hours on this case. He has substantial class action law experience, over the course of most of  
3 his over 15 years in practice, and his billing rate is \$625 per hour. A true and correct copy of  
4 the Curriculum vitae of Jonathan Davis is Exhibit 3 hereto.

5 29. Steven R. Weinmann, Of Counsel to the firm, has obtained substantial class action  
6 law experience over the course of his more than 23 years in practice. Mr. Weinmann has had  
7 responsibility for litigation of consumer class action, securities, and antitrust cases under  
8 federal and state law in numerous jurisdictions. He has been counsel for the plaintiff on  
9 several reported opinions, including *McAdams v. Monier, Inc.*, 182 Cal.App.4th 174 (2010), in  
10 which the Court of Appeal reversed a denial of class certification and decided an important  
11 issue of law as to standing of class representatives in cases under the Unfair Competition Law,  
12 and held that reliance could be inferred from a failure to disclose a material fact under the  
13 Consumer Legal Remedies Act. He has also successfully opposed motions for summary  
14 judgment, and prepared for and acted as second chair in a trial of a multimillion-dollar private  
15 Sherman Act suit for monopolization in the natural gas processing industry. His hourly rate is  
16 \$550 per hour, and he has billed 1074.30 hours. A true and correct copy of his Curriculum  
17 vitae is Exhibit 4 hereto.

18 30. Kevin Osborne, an associate with three years of experience, worked on this case and  
19 reviewed and analyzed the documentation provided by Facebook and assisted in analyzing  
20 damages and working with experts as to damages calculations. He holds a Bachelor's of Arts  
21 in Economics and a Master's of International Affairs with an emphasis in Economics. He has  
22 studied macroeconomics, macroeconomic policy and performance, microeconomics, and  
23 econometrics at the undergraduate level as well as graduate-level economic policy, managerial  
24 economics, finance, and accounting. He has also worked on numerous cases involving  
25 financial institutions and banks, including the central bank of Mexico. Kevin has calculated  
26 damages and presented such calculations in over 50 briefs, including highly complex damage  
27 calculations in financial institution and wage and hour class actions. Kevin has a total of  
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1 534.80 hours on this case. His billing rate is \$425 per hour. A true and correct copy of the  
2 curriculum vitae of Kevin Osborne, is Exhibit 5 hereto.

3 31. Robert Foss is a second-year associate in my office. He was admitted to the bar on  
4 February 18, 2011. In addition to a law degree, Mr. Foss holds an undergraduate degree in  
5 Business Economics, as well as a Masters in Business Administration. Graduate level courses  
6 include Data and Decision Analysis, Technology-Enabled Innovation, Marketing Management  
7 and Small Business Ventures. Prior to joining the Arns Law Firm, Mr. Foss worked as the  
8 Information Technology Department Head for a resource management company where he was  
9 in charge of managing the system at five office locations including hardware, software and  
10 end-user support. Mr. Foss's computer experience and education were instrumental in  
11 examination of the monetization, metrics and analytics of Sponsored Stories marketing. A  
12 true and correct copy of the Curriculum vitae of Robert C. Foss, Associate Attorney at The  
13 Arns Law Firm, is Exhibit 6 hereto. His hourly rate as an associate is \$350. His total hours  
14 are 1061.60.

15 32. Further, although Mr. Osborne and Mr. Foss are younger attorneys, their personal  
16 experience with Facebook and its evolution provides them with an understanding of every  
17 aspect of Facebook that older attorneys may not grasp. Thus, these members of our litigation  
18 team were invaluable in providing great insight into the inner working of Facebook.

19 33. Exhibit 7 hereto is a summary of the attorney hours in this case, and a graph / pie  
20 chart of the hours broken down for all attorneys (All Allocated Attorney Work Hours).  
21 Separate pie charts for each of the attorneys' law firms are Exhibit 8 hereto. The charts  
22 allocate the time worked by each attorney into ten task categories. The ten task categories,  
23 with total hours as to all attorneys, are 1) Legal Research, Case Review & Memos (971.60  
24 hours), 2) Discovery, Document Review & Organization (1637.60 hours), 3) Strategy  
25 Meetings, Communication and Working Groups with Own Counsel (1045.80 hours), 4)  
26 Correspondence with Class Rep. (23.60 hours), 5) Correspondence with Experts/Others  
27 (225.50 hours), 6) Depositions, Exhibits, & Relevant Preparations (1233.00 hours), 7)

1 Motions, Orders & Relevant Preparations (1775.90 hours), 8) Court Appearances & Relevant  
2 Preparations (423.00 hours), 9) Mediation, Settlement & Relevant Preparations (787.00  
3 hours), and 10) Correspondence with Defendants, Meet and Confer & Relevant Preparations  
4 (223.60 hours). The Arns Law Firm expressly avoided performing duplicative work by  
5 engaging in working groups and strategy meetings with counsel within the firm.

6 34. The discovery in this case has been extensive. As detailed below, Plaintiffs prepared  
7 and served at total of 8 sets of total written discovery requests, including 11 sets of document  
8 demands upon defendants (214 individual requests); 6 sets of Requests for Admission total  
9 upon each of the defendants (249 individual requests); and 25 Interrogatories.

10 35. The Arns Law Firm prepared for the depositions of Facebook personnel over a  
11 period of many hours, poring over thousands of documents produced by Defendants.

12 36. Plaintiffs spent considerable time and effort preparing a Voluntary Settlement  
13 Conference presentation for mediation. This “VSC” showcased the many points which  
14 Plaintiffs believe support the claimed violations of the law. The Voluntary Settlement  
15 Conference Statement was over 200 pages long, not counting the numerous appendices, was a  
16 large undertaking including all legal theories, and the key deposition and exhibit excerpts  
17 which were crucial in setting forth the Plaintiffs’ evidence and theory of the case. The VSC  
18 covered numerous issues of liability such as the Unfair Competition Law, and the proof needed  
19 under Cal. Civil Code section 3344, among others, as well as defenses such as the CDA. It also  
20 included an exhaustive discussion of the evidence gathered in the case to date.

21 37. Before the initial complaints were filed, Class Counsel began investigating what  
22 claims, if any, were properly brought against the Defendants. Extensive discussions with the  
23 Class Representatives were had, and a detailed review of their documents was also performed.

#### 24 **IV. DISCOVERY AND EXPERTS**

##### 25 **A. Depositions and Experts**

26 38. The Arns Law Firm prepared for and conducted nine depositions and defended twelve  
27 more, for a total of twenty-one depositions, amounting in total to 4,263 pages of transcript.

1 39. For each deposition, there was extensive pre-deposition preparation of exhibits,  
2 strategies, and questions. After conducting the depositions and upon receiving the deposition  
3 transcript from the court reporter, a deposition extract was created, which summarized and  
4 analyzed the content generated from the deposition. The following depositions of Facebook  
5 personnel were taken:

6 Ana Yang, Legal Project Manager (10/4/11)  
7 Christopher Plambeck, Director, Monetization Analytics (9/28/11)  
8 Gokul Rajarem, Director, Product Management (1/24/12)  
9 James Squires, Manager, Product Marketing (9/20/11)  
10 James Squires, Manager, Product Marketing (10/14/11)  
11 John Hegeman, Engineering Manager (2/17/12)  
12 Kent Schoen, Former Product Manager (2/22/12)

13 40. Plaintiffs located and retained appropriate experts for the class certification motion  
14 as well as the case in chief. Each expert had to be extensively prepared to make their  
15 declarations to support Plaintiffs' Motion for Class Certification as well as extensively prepared  
16 for their depositions, and then had to have their depositions defended. The experts for plaintiff,  
17 with deposition dates were:

18 Vincent Alberico, Software Architect (4/9/12)  
19 David Taber, MBA, owner of online marketing company (4/10/12)  
20 Fernando Torres, Economist specializing in right of publicity (4/11/12)  
21 Gary Frazier, PhD Professor of Marketing, USC (4/12/12)  
22 Richard Drogin, PhD, Statistician (4/13/12)

23 These expert depositions resulted in 1,065 pages of transcript and the creation of extensive  
24 deposition exhibits.

25 41. Plaintiffs also prepared for and took the depositions of Facebook's experts Catherine  
26 Tucker (Professor of Marketing at MIT) on 4/24/12 and Randolph Bucklin (Professor of  
27 Marketing at UCLA) on 4/27/12. These experts had each submitted forty-page declarations in  
28 opposition to Plaintiffs Motion for Class Certification.

42. Plaintiffs defended seven plaintiff depositions, representing four of the named  
plaintiffs, Susan Mainzer, minor class representative James H. Duval (who has turned 18  
during the pendency of this action), Angel Fraley and minor class representative W.T., and

1 three parents of class members: James Duval, Sr. (guardian for Plaintiff James H. Duval),  
2 Russell Tait (guardian and father for Plaintiff W.T.), and Patricia Coluse, mother of James H.  
3 Duval. Each of these depositions required extensive preparation. Their depositions were  
4 defended and extract summaries of the content of the transcripts were prepared and analyzed.  
5 These depositions produced 1,371 pages of content.

6 **B. Propounding Discovery**

7 43. Requests for Production of Documents. Counsel prepared and served 11 sets of  
8 Requests for Production of Documents (“RFDs”), for a combined total of 214 requests, upon  
9 Defendant, Facebook, Inc. Further efforts were expended in order to compel responses to  
10 many of these requests. Ultimately, Counsel received Defendants’ responses to these requests  
11 amounting to over 200,000 documents that had to be analyzed.

12 a. RFD Set 1 contained seven requests regarding key documents about Sponsored  
13 Stories, including the creation of Sponsored Stories.

14 b. RFD Set 2 included nine requests regarding the terms and conditions of the  
15 agreements between Facebook and Plaintiffs and between Facebook and all other  
16 Facebook Members (“Members”). Specifically, the requests sought documents  
17 regarding any announcement or information given to Members about the launch of  
18 Sponsored Stories and how it functions differently from other advertisements, whether  
19 Member consent is required in order for a Member’s name and/or likeness to be  
20 available for use through Sponsored Stories, and a Member’s ability to opt-out of  
21 Sponsored Stories.

22 c. RFD Set 3 was comprised of eight requests regarding the advertising value of  
23 Facebook’s Sponsored Stories. The eight requests sought documentation of  
24 communication from Facebook to advertisers regarding the newly implemented  
25 Sponsored Stories, the agreements between Facebook and its “premium” advertisers, all  
26 revenue derived by Facebook attributable to Sponsored Stories, and a detailed  
27 breakdown by month of gross revenue generated by advertising.



1 d. RFD Set 4 included 20 requests regarding the creation of Sponsored Stories.  
2 The requests targeted a development timeline, documents showing the motivation for  
3 the creation of Sponsored Stories—including the reasoning behind deciding not to seek  
4 consent to its implementation—any marketing efforts aimed at advertisers and  
5 Members, and any communication between The Nielsen Company and Facebook,  
6 including any documents from Nielsen upon which Facebook relied demonstrating the  
7 benefits of a user-endorsed advertising like Sponsored Stories. It also sought any  
8 content available on Facebook’s Help Center related to Sponsored Stories, the identities  
9 of participating advertisers, and the value of friend-endorsed advertisements.

10 e. RFD Set 5 contained 19 requests regarding the inner workings of Sponsored  
11 Stories and the extent of its use to date. More specifically, the requests sought the  
12 identities of all Members whose name and/or likeness had been used in a Sponsored  
13 Story to date, what actions the Members engaged in that caused them to appear in the  
14 ads, the mechanism through which a Sponsored Story is delivered to a particular  
15 Facebook page, and the process through which a specific destination page is determined.  
16 Set 5 also requested documents pertaining to the research and development of  
17 Sponsored Stories, any changes made to its software code since its creation, and any  
18 Member ability to opt-out of the feature. The requests sought information regarding the  
19 total number of Members in the United States, the number of Sponsored Stories  
20 impressions made using Member’s name and/or likeness, and, of those, the number of  
21 Members who were minors at the time.

22 f. RFD Set 6 encompassed 30 requests regarding Defendant’s denial of various  
23 Plaintiff Requests for Admission.

24 g. RFD Set 7 contained 12 requests regarding the value and effectiveness of  
25 Sponsored Stories. The requests sought information about the amounts charged by  
26 Facebook to third parties that purchased Sponsored Stories in 2011, the amounts  
27 charged to the top ten advertisers, data summarizing the effectiveness of Sponsored  
28

1 Stories as compared to a control advertisement, and other information about the  
2 effectiveness of Sponsored Stories to Facebook customers, partners, and third parties.  
3 The requests also sought any and all communications to or from Mark Zuckerberg,  
4 David Fisher, Cheryl Sandberg, and Gokul Rajaram relating to Sponsored Stories.

5 h. RFD Set 8 was comprised of 14 requests regarding the measurement of the  
6 value generated by Sponsored Stories as compared to other Facebook advertising  
7 products and services. The requests sought information pertaining to the value of  
8 Sponsored Stories in terms of income generated for Facebook and heightened click-  
9 through rates as well as any studies or samples relating to its value as compared to other  
10 advertisement products and services unaffiliated with Facebook.

11 i. RFD Set 9 included 57 requests for documents, which assessed various aspects  
12 of Sponsored Stories ad campaigns in relation to non-Sponsored Story ad campaigns  
13 such as budgets, durations, click-through rates, the names of advertisers and their  
14 respective bid amounts, cost per click-through and cost per impression. The requests  
15 also sought internal and external explanatory documents regarding changes to the  
16 Sponsored Stories feature effective as of September 2011, such as the new or additional  
17 types of “Stories” shown to the public, differences in how the ads were sold, and web  
18 page location where they appeared.

19 j. RFD Set 10 consisted of 37 requests regarding the varying degree of influence a  
20 given Member may wield when appearing in a Sponsored Story. The requests also  
21 sought documents relevant to show a wide range of data concerning Facebook ads and  
22 Sponsored Stories captured by Defendant, such as number of impressions and revenue  
23 realized, as well as additional information required to explain documents received thus  
24 far from Facebook in response to previous RFDs.

25 k. RFD Set 11 contained 1 request regarding any documents on which Facebook  
26 intended to rely for any purpose at trial.

27 These Requests for Production resulted in Facebook providing over 200,000 documents, each  
28

1 of which had to be analyzed by the plaintiff legal team.

2 44. **Interrogatories.** Counsel prepared and served a total of 25 interrogatories upon  
3 Defendant, Facebook, Inc. Efforts were expended in order to compel responses to certain of  
4 these requests and ultimately Counsel received and analyzed Defendants' responses to these  
5 requests.

6 a. Interrogatory Set 1 included 15 interrogatories regarding the creation of  
7 Sponsored Stories, its function, operation, and total revenue generation. The  
8 interrogatories also inquired about the total number of Facebook Members and the  
9 number of Members who are minors.

10 b. Interrogatory Set 2 contained four interrogatories inquiring the number of  
11 Facebook Members who have been used by Sponsored Stories and the number of  
12 minors included in such a group.

13 c. Interrogatory Set 3 consisted of two interrogatories concerning the measurement  
14 of value created by Sponsored Stories.

15 d. Interrogatory Set 4 included three interrogatories regarding the information  
16 captured from each Facebook ad impression as well as facts supporting Facebook's  
17 denial of various Plaintiff RFAs.

18 45. **Requests for Admission.** Counsel prepared and served six sets of Requests for  
19 Admission ("RFAs"), a total of 249 requests, upon Defendant, Facebook, Inc. Further efforts  
20 were dedicated to compelling responses to many of these requests, and ultimately Counsel  
21 received and analyzed Defendants' responses to these requests.

22 a. RFA Set 1 consisted of 12 requests concerning Member's identities, lack of  
23 Member consent with regard to the usage of name and/or likeness through Sponsored  
24 Stories, and the for-profit nature of the feature.

25 b. RFA Set 2 contained 10 requests regarding Facebook's Terms and Conditions,  
26 Privacy Policy, Statement of Rights and Responsibilities, and the lack of changes to  
27 these agreements despite the implementation of Sponsored Stories.

1 c. RFA Set 3 was comprised of four requests concerning the increased revenue  
2 generated by Sponsored Stories and its attribution to the use of Member's name and/or  
3 likeness, as well as the lack of ability to opt-out of the feature.

4 d. RFA Set 4 included 14 requests pertaining to the non-consensual use of  
5 Member's name and/or likeness in connection with "Story" endorsements, the treatment  
6 of minors in connection with Sponsored Stories, and the partnership between Facebook  
7 and The Nielsen Company.

8 e. RFA Set 5 contained 13 requests regarding a Member's ability to avoid having  
9 her name and/or likeness used in Sponsored Stories, the non-consensual nature of the  
10 feature, and other inner workings of the feature including the algorithms used.

11 f. RFA Set 6 was comprised of 196 requests for admission covering a broad range  
12 of term definitions and specific factual events generated in response to Counsel's  
13 analysis of documents received from Defendant as of such date.

14 46. Subpoenas. Plaintiffs' counsel issued subpoenas to five companies who had  
15 purchased Sponsored Stories advertisements requesting documents provided to them by  
16 Facebook and documents provided by them to Facebook, documents regarding how Sponsored  
17 Stories were being promoted and marketed to advertisers and any studies regarding the  
18 effectiveness of Sponsored Stories as compared to non-endorsed advertisements. These  
19 subpoenas resulted in over 2,000 pages of documents, which were reviewed, analyzed, and  
20 incorporated into the preparation for motions and trial of the litigation. Plaintiffs' counsel  
21 issued subpoenas to the following companies: The Nielsen Company; CafePress; Levi Strauss  
22 & Co.; Razorfish; and Shoedazzle.

23 **C. Document Review**

24 47. The eleven sets of RFDs, six sets of RFAs, four sets of interrogatories, independent  
25 investigation and numerous depositions produced over 200,000 pages of documents, which  
26 Counsel received, sorted, and organized. The Plaintiff Legal Team then carried out the arduous  
27

1 task of exhaustively analyzing, categorizing, numbering and summarizing these thousands of  
2 pages of technical and complex documents.

3 48. From the over 200,000 documents in this case, Plaintiffs' Counsel then identified  
4 and marked 725 exhibits, which were used in depositions, motions and other filings.

5 **D. Responding to Defendant's Discovery Requests**

6 49. Interrogatories. Plaintiffs' counsel received, analyzed and responded to 105  
7 interrogatories from Facebook. Responding to these interrogatories involved extensive  
8 communication with the class representatives, crafting of legal objections, and obtaining  
9 verification of their answers. The demanding task resulted in over 278 pages of initial and  
10 supplemental responses from named plaintiffs. Plaintiffs' counsel received 15 interrogatories  
11 regarding plaintiffs Angel Fraley and Paul Wang and 25 interrogatories regarding plaintiffs  
12 James H. Duval, Susan Mainzer, and W.T.

13 a. Interrogatory Set 1 included 15 to 16 interrogatories regarding the named  
14 plaintiffs' general interactions with Facebook and the company's approach to privacy,  
15 specifically their experience with Facebook's Terms and Policies. The interrogatories  
16 inquired about specific dates the plaintiff accessed the Facebook agreement and also  
17 requested information about all instances where plaintiff "liked" content on Facebook  
18 including the specific dates and content "liked." The firm received these interrogatories  
19 regarding all five named plaintiffs Susan Mainzer, James H. Duval, Paul Wang, Angel  
20 Fraley, and W.T., which we had to review and analyze. We worked extensively with  
21 plaintiffs to respond to the interrogatories, which resulted in 112 pages of responses and  
22 supplemental responses.

23 b. Interrogatory Set 2 included nine interrogatories regarding the amount of value  
24 plaintiffs' names and/or likenesses was diminished as a result of its non-consensual use  
25 in a Sponsored Story, their understanding of how their Facebook activity may ultimately  
26 result in the use of their name and/or likeness by a Sponsored Story, and their control  
27 over the amount of exposure of the content they post on Facebook. The firm received  
28

1 these nine interrogatories regarding three named plaintiffs Susan Mainzer, James H.  
2 Duval, and W.T., which we reviewed and analyzed. We worked extensively with these  
3 plaintiffs to respond to the interrogatories, which resulted in 154 pages of responses and  
4 supplemental responses.

5 c. Interrogatory Set 3 consisted of one interrogatory regarding named plaintiff  
6 Mainzer inquiring about the injunctive and equitable relief being sought. Our response  
7 to this interrogatory amounted to 12 pages of content.

8 50. Requests for Production of Documents. Counsel received, analyzed and responded  
9 to 269 Requests for Production of Documents from Defendant, which we reviewed, analyzed  
10 and responded to. This involved extensive communication with the plaintiffs, verification of  
11 their answers, and collection, privilege review, and numbering and service of relevant  
12 documents.

13 a. Counsel received 50 requests regarding plaintiffs Fraley and Wang, 58 requests  
14 regarding plaintiffs James H. Duval and W.T., and 53 requests regarding plaintiff Susan  
15 Mainzer. With regard to minor plaintiffs W.T. and James H. Duval, we worked closely  
16 with both the plaintiffs and their respective guardians in order to generate responses.  
17 The requests resulted in the production of over 7,000 pages of documents by Plaintiffs.

18 51. Requests for Admission. Counsel received, analyzed and responded to 351 Requests  
19 for Admissions from Defendant, which we reviewed and analyzed. Extensive efforts were  
20 expended in order to generate responses to these requests. We worked closely with the named  
21 plaintiffs in order to respond to these requests, and in the case of W.T. and James H. Duval,  
22 with both plaintiffs and their respective guardians.

23 a. The firm received 115 requests regarding named plaintiff Mainzer, 119 requests  
24 regarding plaintiff James H. Duval, and 117 requests regarding named plaintiff W.T.  
25 These requests were received and reviewed, then responded to through extensive work  
26 with the respective plaintiff. The responses were then verified and then served to  
27 Defendant.

1 52. The intensive discovery that took place in this case from its inception allowed the  
2 parties to analyze all aspects of the facts and legal theories to make an informed decision about  
3 the disposition of the case.

4 **E. Motion Practice Related To Discovery**

5 53. In addition, Plaintiffs' Counsel engaged in motion practice with regard to discovery.  
6 We filed three motions for protective orders on 7/5/11, 2/13/12 and 4/17/12. The first motion  
7 was an attempt by Facebook to stall all discovery pending the outcome of its second motion to  
8 dismiss; that motion was denied. These motions also required Plaintiffs' Counsel to prepare for  
9 and attend two court hearings as well as prepare and file a withdrawal of one of these motions.  
10 Facebook's Counsel also made a motion to compel responses to deposition questions and  
11 Plaintiffs' Counsel prepared for and attended a hearing on the matter. Opposing counsel in the  
12 case is Cooley, LLP, a law firm with over 700 lawyers. Some of the same attorneys assigned to  
13 this matter successfully defended Facebook in actions involving some of the same issues,  
14 including *Robyn Cohen v. Facebook*, No. 10-cv-05282 (RS) and *David Cohen v. Facebook,*  
15 *Inc.*, No. BC 444482, Los Angeles County Superior Court.

16 **F. Motion Practice as to Motion to Dismiss and Motion for Class Certification**

17 54. Plaintiffs successfully opposed Facebook's Motion to Dismiss, which involved  
18 numerous difficult legal issues, many of them of first impression. Furthermore, Plaintiffs  
19 prepared for and filed their opening brief for Plaintiffs' Motion for Class Certification and  
20 served and filed their Reply brief to Defendant's Opposition. There were seven experts (five of  
21 whom were Plaintiffs') who prepared declarations and who were deposed. This case has been  
22 fully discovered and prepared for trial.

23 55. Facebook argued in its Motion to Dismiss that the claims were preempted under the  
24 Communications Decency Act, 47 U.S.C. § 230 ("CDA"), and that the "newsworthiness"  
25 exemption of Cal. Civil Code section 3344(d), which grants an exception to the consent  
26 requirement of subdivision (a), for use of a likeness "in connection with any news, public  
27 affairs, or sports broadcast or account, or any political campaign" applies. Facebook could  
28

1 raise both of these defenses again on appeal. Facebook has also raised a defense under the  
2 Children's Online Privacy Protection Act, or COPPA, 15 U.S.C. § 6502, in other matters  
3 (specifically, *David Cohen v. Facebook, Inc*, No. BC 444482, Los Angeles County Superior  
4 Court) and could raise the defense here. The issue of implied consent, and minor consent  
5 particularly in light of the transfer order from the Southern District of Illinois in *E.K.D. v.*  
6 *Facebook*, [now *C.M.D. v. Facebook*, No. 12-cv-01216-RS] by Judge Patrick Murphy,  
7 (applying the Facebook Statement of Rights and Responsibilities to minors and thus implicitly  
8 finding that they could consent) present challenges for Plaintiffs to ultimately prevail on in the  
9 end. There were also significant risks presented by the ability of Facebook users to adopt  
10 pseudonyms and to use profile pictures which were not recognizable to their Facebook friends.  
11 The Class, even if certified, could be certified only for a smaller class size or class period, or  
12 for only certain of the claims, or for injunctive relief only, depending on the Court's findings as  
13 to typicality of the class representatives and the homogeneity of the Class, based upon  
14 variations in Facebook's Statement of Rights and Responsibilities. The ability of minors to  
15 agree or disaffirm agreements is also an issue that could provide the basis for fragmenting the  
16 Class, or for the Court to carve out such a sub-class.

17 56. Class Counsel were able to negotiate a settlement with a view to the risks of continued  
18 litigation, Facebook in its Opposition to the Motion for Class Certification (the parties reached  
19 a settlement agreement only days before the motion was set to be heard) also raised the issue of  
20 whether California Civil Code section 3344 was intended by the Legislature to be brought as a  
21 class action. A holding that a class case under that section was prohibited would potentially  
22 have left Plaintiffs without a basis to continue on a class action basis.

23 57. California Civil Code section 3344 also includes a prevailing party attorneys' fees  
24 provision. This is obviously a substantial risk of litigation in this case, where Facebook has  
25 employed large law firms to mount a vigorous defense. Any such defense would also continue  
26 through the appeals process, as Facebook would not want a precedent set, or to pay a judgment  
27 in an amount which would have a significant impact on its earnings. Facebook has sought its  
28



1 attorneys' fees in similar such cases, indicating that it is concerned with discouraging further  
2 suits.

3 58. Another risk of litigation for Plaintiffs is that the Court will not be inclined to order the  
4 types of changes to Facebook's practices that Class Counsel has been able to negotiate. Courts  
5 are understandably reluctant to micro-manage the business of litigants, and Facebook's cutting-  
6 edge platform is particularly vulnerable to changes being rejected by users, who use Facebook  
7 on a voluntary basis. In a cooperative settlement, Facebook and Class Counsel are better able  
8 to work together to craft stringent, but not unworkable, solutions to the problems identified in  
9 the Complaint and in the case during discovery than would the Court, with advice from a  
10 victorious Plaintiff and resistance from a losing Defendant.

11 59. The litigation required an extensive understanding of California's Unfair  
12 Competition Law, law of publicity (Civil Code section 3344), and the federal Communications  
13 Decency Act. No public agency was pursuing the failure to follow the laws under which  
14 Plaintiffs filed suit against this defendant for this conduct.

15 60. Class Counsel seeks an award of attorneys' fees of \$7,500,000. The Arns Law Firm's  
16 total lodestar, multiplying their hourly rates by the hours worked, is \$5,391,030.00. Class  
17 counsel has committed over 8346.60 hours of their time to this dispute. Class Counsel incurred  
18 expenses of \$282, 566.49 (including anticipated future costs of \$20,000 and a disputed amount  
19 of \$45,000, which will be finalized by Final Approval). A true and correct copy of the  
20 expenses incurred by the Arns Law Firm is Exhibit 9 hereto. Class counsel employed legal  
21 assistants wherever possible to further reduce their total time in the case, but the Arns Law  
22 Firm is not seeking recovery for those hours.

23 61. There was little to no duplication of effort, as I divided up the work as noted into  
24 discrete tasks, between the various attorneys at the firm. The Arns Law Firm further avoided  
25 performing duplicative work by engaging in working groups and strategy meetings within the  
26 firm. We thus consciously assigned and performed work as efficiently and effectively as  
27 possible by the attorneys in accordance with their respective skills, expertise, and availability.

1 62. I prepared my timesheets in part contemporaneously and in part by re-creation  
2 through looking through my e-mails and the time recorded by others in the matter, and by  
3 looking at the calendar of events and court appearances kept by my office in the regular course  
4 of business. The time records of Jonathan Davis, Kevin Osborne, Steven Weinmann and  
5 Robert Foss were similarly prepared. I have carefully reviewed my own and their hours, and  
6 believe that they fairly reflect the amount of time spent in this matter by each of us. In fact, I  
7 strongly believe that each of us, and myself in particular, had a substantially larger amount of  
8 time which was not accounted for, simply because we often took calls or had meetings which  
9 we did not immediately memorialize. Where appropriate, I have also selectively reduced or  
10 eliminated time which I felt exceeded what was needed for a given task.

11 63. Copies of the detailed timesheets are proprietary, but our law firm will make them  
12 available for the Court's review *in camera* upon request.

13 64. I billed a total of 3261.10 hours in this case. My time in this case, as broken out in the  
14 summary of my attorney hours in Exhibit 7, by topic, are 1) Legal Research, Case Review &  
15 Memos (359.30 hours), 2) Discovery, Document Review & Organization (819.70 hours), 3)  
16 Strategy Meetings, Communication & Working Groups with Own Counsel (482.00 hours), 4)  
17 Correspondence with Class Representative (5.60 hours), 5) Correspondence with  
18 Experts/Others (43.60 hours), 6) Depositions, Exhibits, & Relevant Preparations (618.40  
19 hours), 7) Motions, Orders & Relevant Preparations (271.80 hours), 8) Court Appearances &  
20 Relevant Preparations (100.30 hours), 9) Mediation, Settlement & Relevant Preparations  
21 (499.30 hours), and 10) Correspondence with Defendants, Meet and Confer & Relevant  
22 Preparations (61.10 hours).

23 65. I have reviewed the hours for my partner, Jonathan Davis, in this action, and they  
24 comport with my recollection of the time which he spent on this case. He has a total of 384.90  
25 hours on this case. He was involved in several meetings with co-counsel as to strategy. His  
26 hours are billed at \$625 per hour. His time in this case, as included in the summary of his hours  
27 in Exhibit 7, by topic, are 1) Legal Research, Case Review & Memos (0.00 hours), 2)

1 Discovery, Document Review & Organization (1.60 hours), 3) Strategy Meetings,  
2 Communication & Working Groups with Own Counsel (149.70 hours), 4) Correspondence  
3 with Class representative (0.0), 5) Correspondence with Experts/Others (7.20 hours), 6)  
4 Depositions, Exhibits, & Relevant Preparations (61.00 hours), 7) Motions, Orders & Relevant  
5 Preparations (88.60 hours), 8) Court Appearances & Relevant Preparations (31.50 hours), 9)  
6 Mediation, Settlement & Relevant Preparations (4.20 hours) and 10) Correspondence with  
7 Defendants, Meet and Confer & Relevant Preparations (41.10 hours).

8 66. I have reviewed the hours entered by Steven Weinmann, who is Of Counsel to The  
9 Arns Law Firm, and they comport with my recollection of the time which he spent on this case.  
10 Steven has a total of 1074.30 hours on this case. He has substantial class action law  
11 experience, over the course of most of his over 23 years in practice, and his billing rate is \$550  
12 per hour. His time in this case, as broken out in his summary of attorney hours in Exhibit 7, are  
13 1) Legal Research, Case Review & Memos (62.40 hours), 2) Discovery, Document Review &  
14 Organization (118.00 hours), 3) Strategy Meetings, Communication & Working Groups with  
15 Own Counsel (47.80 hours), 4) Correspondence with Class Representative (0.70 hours), 5)  
16 Correspondence with Experts/Others (16.20 hours), 6) Depositions, Exhibits, & Relevant  
17 Preparations (0.00 hours), 7) Motions, Orders & Relevant Preparations (657.70 hours), 8) Court  
18 Appearances & Relevant Preparations (95.50 hours), 9) Mediation, Settlement & Relevant  
19 Preparations (58.50 hours), and 10) Correspondence with Defendants, Meet and Confer &  
20 Relevant Preparations (17.50 hours).

21 67. I have reviewed the hours for my associate Kevin Osborne in this action, and they  
22 comport with my recollection of the time which he spent on this case. He has a total of 534.80  
23 hours on this case. He was involved in several meetings as to strategy, and divided his time  
24 researching and drafting memos as well as reviewing and organizing documents. His hours are  
25 billed at \$425 per hour. His hours in this case, as included in the summary of his hours in  
26 Exhibit 7, by topic, are 1) Legal Research, Case Review & Memos (76.20 hours), 2) Discovery,  
27 Document Review & Organization (17.70 hours), 3) Strategy Meetings, Communication &

1 Working Groups with Own Counsel (58.00 hours), 4) Correspondence with Class  
2 Representative (0.00 hours), 5) Correspondence with Experts/Others (63.60 hours), 6)  
3 Depositions, Exhibits, & Relevant Preparations (69.90 hours), 7) Motions, Orders & Relevant  
4 Preparations (160.00 hours), 8) Court Appearances & Relevant Preparations (20.00 hours), 9)  
5 Mediation, Settlement & Relevant Preparations (43.00 hours), and 10) Correspondence with  
6 Defendants, Meet and Confer & Relevant Preparations (26.40 hours).

7 68. I have reviewed the hours for my associate Robert Foss in this action, and they  
8 comport with my recollection of the time which he spent on this case. He has a total of  
9 1061.60 hours on this case. He was involved in several meetings with co-counsel as to  
10 strategy, and divided his time researching and drafting memos as well as reviewing and  
11 organizing documents. Some of his time spent on this case was prior to his admission as an  
12 attorney and his hourly rate for that time is billed at \$350 per hour. His time in this case, as  
13 included in the summary of his hours in Exhibit 7, by topic, are 1) Legal Research, Case  
14 Review & Memos (57.50 hours), 2) Discovery, Document Review & Organization (236.80  
15 hours), 3) Strategy Meetings, Communication & Working Groups with Own Counsel (213.00  
16 hours), 4) Correspondence with Class Representative (0.00 hours), 5) Correspondence with  
17 Experts/Others (30.10 hours), 6) Depositions, Exhibits, & Relevant Preparations (72.0 hours),  
18 7) Motions, Orders & Relevant Preparations (220.40 hours), 8) Court Appearances & Relevant  
19 Preparations (74.20 hours), 9) Mediation, Settlement & Relevant Preparations (142.30 hours),  
20 and 10) Correspondence with Defendants, Meet and Confer & Relevant Preparations (15.30  
21 hours).

22 69. Co-counsel Jonathan Jaffe has a total of 2029.90 hours on this case. His hours are  
23 billed at \$425 per hour. His hours in this case, as included in the summary of his hours in  
24 Exhibit 7, by topic, are 1) Legal Research, Case Review & Memos (416.20 hours), 2)  
25 Discovery, Document Review & Organization (443.80 hours), 3) Strategy Meetings,  
26 Communication & Working Groups with Own Counsel (95.30 hours), 4) Correspondence with  
27 Class Representative (17.30 hours), 5) Correspondence with Experts/Others (64.80 hours), 6)

1 Depositions, Exhibits, & Relevant Preparations (411.70 hours), 7) Motions, Orders & Relevant  
2 Preparations (377.40 hours), 8) Court Appearances & Relevant Preparations (101.50 hours), 9)  
3 Mediation, Settlement & Relevant Preparations (39.70 hours), and 10) Correspondence with  
4 Defendants, Meet and Confer & Relevant Preparations (62.20 hours).

5 70. The total hours for which attorney's fees are being sought for my firm are 8346.60  
6 hours in this case, as disclosed in the summary chart attached hereto as Exhibit 9. For all hours  
7 for all attorneys at my firm, including myself, I exercised my discretion to cut hours where I  
8 felt that the time was non-compensable or exceeded what was reasonably necessary to  
9 accomplish the task in question. Multiplied by our respective billing rates of the attorneys at  
10 my firm, the lodestar for my firm and Jonathan Jaffe Law comes to a total of \$5,391,030.00. A  
11 significant amount of additional attorney hours, estimated at about 300 hours, will be necessary  
12 to ensure final approval and proper administration of the Settlement including the claims  
13 process. This future work is not reflected in the lodestar before the Court and effectively  
14 reduces the requested multiplier.

15 71. Plaintiffs' counsel's total expenses include the expenses attached hereto as Exhibit 10  
16 (\$282,566.49). These include filing fees, expert costs, research costs, as well as electronic data  
17 and computer search and retrieval systems. It also includes \$65,000 for anticipated future costs.  
18 Class Counsel is currently in a dispute as to one item included in those anticipated costs. The  
19 company Razorfish, Inc. made a demand for a substantial amount of money, \$45,000, for  
20 compliance with a records subpoena. Class Counsel has offered \$500, but thus far the  
21 company has not accepted it. Class Counsel expects to resolve / have more detail as to these  
22 anticipated costs by the Final Approval Hearing.

23 72. The claims in this case support an application for attorneys' fees in the amount of  
24 \$7,500,000.00. Plaintiffs are requesting this amount based upon a multiplier of 1.391, given  
25 the excellent result for the Class, on a total lodestar of \$5,391,030.00. With the expenses of  
26 \$282,566.49, the total fee and cost award requested is \$7,782,566.49.

1 73. The fees are reasonable and in-line with the market in the San Francisco area for this  
2 type of work and for attorneys with this level of expertise and experience. The Declaration of  
3 Richard Pearl submitted herewith confirms that these rates are reasonable.

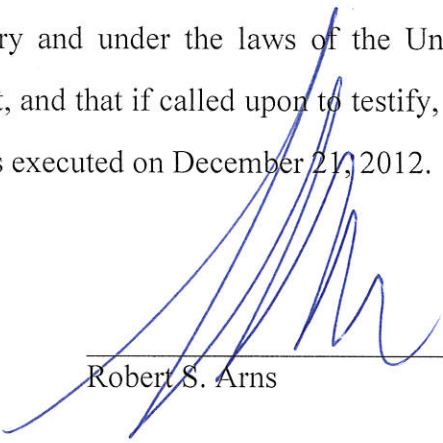
4 **V. SERVICE AWARDS TO CLASS REPRESENTATIVES**

5 74. Plaintiffs Susan Mainzer, James H. Duval, and W.T. have provided document  
6 discovery and monitored the progress of the action, have been deposed in lengthy depositions,  
7 and should be rewarded for taking the initiative to file the action, and for their role in reaching  
8 a Settlement providing for valuable relief to the Settlement Class. The Class representatives  
9 have spent considerable time consulting with Mr. Jaffe, myself, and the other attorneys in my  
10 office, with respect to their claims and those of the Class. They have participated in preparing  
11 and reviewing a myriad of discovery responses in response to the discovery propounded by  
12 Defendant, as set out more fully below. I would estimate that they have spent in excess of 150  
13 hours with respect to their duties as putative class representatives. Furthermore, they exposed  
14 themselves, under Civil Code section 3344, to potential liability for Facebook's attorneys' fees  
15 but persisted with the case even after Facebook sought over \$700,000 in such fees in another  
16 case.

17 75. Plaintiffs Susan Mainzer, James Duval and W.T. have thus provided invaluable aid,  
18 spent many hours participating in responding to document discovery, analyzed documents and  
19 met with counsel. They also actively monitored the progress of the action, attended the  
20 mediation, and were ready to testify if necessary. They should be rewarded for taking the  
21 initiative to file the action, and for their role in reaching a Settlement providing for valuable  
22 relief to the Settlement Class. A service award of \$12,500 each is accordingly requested for  
23 their service as class representatives, and is appropriate.

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I declare under the penalty of perjury and under the laws of the United States of America that the foregoing is true and correct, and that if called upon to testify, I could verify the accuracy of the same. This document was executed on December 21, 2012.



---

Robert S. Arns

Cornell, Cindy

---

**From:** ECF-CAND@cand.uscourts.gov  
**Sent:** Friday, December 21, 2012 12:19 PM  
**To:** efilings@cand.uscourts.gov  
**Subject:** Activity in Case 3:11-cv-01726-RS Fraley et al v. Facebook, Inc. Declaration in Support

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U.S. District Court

California Northern District

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The following transaction was entered by Arns, Robert on 12/21/2012 at 12:19 PM PST and filed on 12/21/2012

**Case Name:** Fraley et al v. Facebook, Inc.  
**Case Number:** [3:11-cv-01726-RS](#)  
**Filer:** James H Duval  
Susan Mainzer  
William Tait

**Document Number:** [254](#)

#### Docket Text:

**Declaration of ROBERT S. ARNS in Support of [253] MOTION for Attorney Fees AND MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR ATTORNEYS' FEES AND COSTS AND CLASS REPRESENTATIVES' SERVICE AWARDS** filed by James H Duval, Susan Mainzer, William Tait. (Attachments: # (1) Exhibit 1, # (2) Exhibit 2, # (3) Exhibit 3, # (4) Exhibit 4, # (5) Exhibit 5, # (6) Exhibit 6, # (7) Exhibit 7, # (8) Exhibit 8, # (9) Exhibit 9, # (10) Exhibit 10)(Related document(s)[253]) (Arns, Robert) (Filed on 12/21/2012)

**3:11-cv-01726-RS Notice has been electronically mailed to:**

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**3:11-cv-01726-RS Please see [Local Rule 5-5](#); Notice has NOT been electronically mailed to:**

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The following document(s) are associated with this transaction:

**Document description:**Main Document

**Original filename:**RSA Declaration.pdf

**Electronic document Stamp:**

[STAMP CANDStamp\_ID=977336130 [Date=12/21/2012] [FileNumber=9219674-0]  
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**Document description:**Exhibit 1

**Original filename:**RSA Dec Ex 1.pdf

**Electronic document Stamp:**

[STAMP CANDStamp\_ID=977336130 [Date=12/21/2012] [FileNumber=9219674-1]  
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**Document description:**Exhibit 2

**Original filename:**RSA Dec Ex 2.pdf

**Electronic document Stamp:**

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**Document description:**Exhibit 3

**Original filename:**RSA Dec Ex 3.pdf

**Electronic document Stamp:**

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**Document description:**Exhibit 4

**Original filename:**RSA Dec Ex 4.pdf

**Electronic document Stamp:**

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**Document description:**Exhibit 5

**Original filename:**RSA Dec Ex 5.pdf

**Electronic document Stamp:**

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**Original filename:**RSA Dec Ex 6.pdf

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**Original filename:**RSA Dec Ex 7.pdf

**Electronic document Stamp:**

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**Document description:**Exhibit 8

**Original filename:**RSA Dec Ex 8.pdf

**Electronic document Stamp:**

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**Original filename:**RSA Dec Ex 9.pdf

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**Document description:**Exhibit 10

**Original filename:**RSA Dec Ex 10.pdf

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