

1 THE ARNS LAW FIRM  
2 ROBERT S. ARNS (65071)  
(rsa@arnslaw.com)  
3 JONATHAN E. DAVIS (191346)  
(jed@arnslaw.com)  
4 STEVEN R. WEINMANN (190956)  
(srw@arnslaw.com)  
5 515 Folsom Street, 3rd Floor  
6 San Francisco, CA 94105  
7 Tel: (415) 495-7800  
Fax: (415) 495-7888

COOLEY LLP  
MICHAEL G. RHODES (116127)  
(mrhodes@cooley.com)  
MATTHEW D. BROWN (196972)  
(brownmd@cooley.com)  
JEFFREY M. GUTKIN (216083)  
(jgutkin@cooley.com)  
101 California Street, 5th Floor  
San Francisco, CA 94111-5800  
Telephone: (415) 693-2000  
Facsimile: (415) 693-2222

8 JONATHAN JAFFE LAW  
9 JONATHAN M. JAFFE (267012)  
(jmj@jaffe-law.com)  
10 3055 Hillegass Avenue  
11 Berkeley, CA 94705  
12 Tel: (510) 725-4293  
13 Fax: (510) 868-3393

Attorneys for Defendant Facebook, Inc.

Attorneys for Plaintiffs

14 UNITED STATES DISTRICT COURT  
15 NORTHERN DISTRICT OF CALIFORNIA  
16 SAN FRANCISCO DIVISION

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

22 Plaintiffs,

23 v.

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

25 Defendants.  
26  
27  
28

Case No. CV 11-01726 RS

**JOINT MOTION FOR PRELIMINARY  
APPROVAL OF REVISED SETTLEMENT**

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



1 This Motion is based on this Notice of Motion and Motion; Defendant Facebook’s  
2 Memorandum of Points & Authorities in Support of Joint Motion for Preliminary Approval of  
3 Revised Settlement and the accompanying Declarations of Christopher Plambeck, James C.  
4 Squires, Michael G. Rhodes, and Matthew D. Brown, including any exhibits thereto; Plaintiffs’  
5 Memorandum of Law in Support of Motion for Class Certification, Appointment of Class  
6 Counsel and Appointment of Class Representatives Pursuant to Motion for Preliminary Approval,  
7 and the accompanying Declarations of Robert Arns, Jonathan E. Davis, Phillip Allman, and  
8 Fernando Torres, including all exhibits thereto; all pleadings and papers on file in this matter, and  
9 such other matters as may be presented to the Court at the time of the hearing or otherwise.

10  
11 Dated: October 5, 2012

THE ARNS LAW FIRM

12 /s/ Robert S. Arns

13 Robert S. Arns (65071)

14 THE ARNS LAW FIRM  
15 ROBERT S. ARNS (65071)

(rsa@arnslaw.com)

16 JONATHAN E. DAVIS (191346)

(jed@arnslaw.com)

17 STEVEN R. WEINMANN (190956)

(srw@arnslaw.com)

18 515 Folsom Street, 3rd Floor

San Francisco, CA 94105

Tel: (415) 495-7800

19 Fax: (415) 495-7888

20 JONATHAN JAFFE LAW

JONATHAN M. JAFFE (267012)

(jnj@jaffe-law.com)

21 3055 Hillegass Avenue

Berkeley, CA 94705

22 Tel: (510) 725-4293

23 Fax: (510) 868-3393

24 Attorneys for Plaintiffs

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Dated: October 5, 2012

COOLEY LLP

/s/ Michael G. Rhodes  
Michael G. Rhodes (116127)

COOLEY LLP  
MICHAEL G. RHODES (116127)  
mrhodes@cooley.com  
MATTHEW D. BROWN (196972)  
brownmd@cooley.com  
JEFFREY M. GUTKIN (216083)  
jgutkin@cooley.com  
101 California Street, 5th Floor  
San Francisco, CA 94111-5800  
Telephone: (415) 693-2000  
Facsimile: (415) 693-2222

Attorneys for Defendant Facebook, Inc.

**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 each of the other signatories.

Dated: October 5, 2012

/s/ Michael G. Rhodes  
Michael G. Rhodes

1286422/SF

## AMENDED SETTLEMENT AGREEMENT AND RELEASE

THIS AMENDED SETTLEMENT AGREEMENT AND RELEASE (“*Settlement Agreement*” or “*Settlement*” or “*Agreement*” or “*Revised Agreement*”) is entered into between plaintiffs Susan Mainzer, James H. Duval, and W.T., a minor, by and through Russell Tait as Guardian ad Litem (“*Plaintiffs*”), individually and in their representative capacity as plaintiffs on behalf of the Class (including the Minor Subclass), and defendant Facebook, Inc. (“*Facebook*” or “*Defendant*”) (Plaintiffs and Facebook collectively, “*Parties*,” or singularly, “*Party*”).

### RECITALS

**A.** On or about March 11, 2011, plaintiffs Angel Fraley, Paul Wang, and Susan Mainzer commenced a lawsuit (“*Action*”) by filing an unverified Complaint in the Superior Court of the State of California, County of Santa Clara entitled *Angel Fraley, Paul Wang, and Susan Mainzer, individually and on behalf of all others similarly situated v. Facebook, Inc., a corporation, and DOES 1-100*. The case was assigned the number 11-cv-196193. The Complaint sought relief on behalf of a putative class and asserted claims under California Civil Code section 3344 and California Business and Professions Code section 17200 (California’s Unfair Competition Law (“*UCL*”)) and for unjust enrichment. The Complaint generally asserted that Facebook used the plaintiffs’ names, photographs, likenesses, or identities (or some combination thereof) to advertise or sell products or services through “Sponsored Stories” without the plaintiffs’ permission.

**B.** On March 18, 2011, plaintiffs Angel Fraley, Paul Wang, Susan Mainzer, and newly-added plaintiffs 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, filed an Amended Complaint. The Amended Complaint, like the original Complaint, sought relief on behalf of a putative class related to Sponsored Stories and asserted claims under California Civil Code section 3344 and California’s UCL and for unjust enrichment.

**C.** On April 8, 2011, Facebook removed the Action from the Superior Court of the State of California, County of Santa Clara to the United States District Court for the Northern District of California (“*Court*”). Following removal, the Action was assigned case number 11-cv-01726.

**D.** On May 18, 2011, Facebook moved to dismiss the Amended Complaint and all of its claims pursuant to Federal Rule of Civil Procedure 12(b)(1), for lack of Article III standing, and Federal Rule of Civil Procedure 12(b)(6), for failure to state a claim.

**E.** On June 6, 2011, Plaintiffs responded to Facebook’s motion to dismiss by filing a Second Amended Complaint. The Second Amended Complaint, like the prior complaints, sought relief on behalf of a putative class related to Sponsored Stories and asserted claims under California Civil Code section 3344 and California’s UCL and for unjust enrichment.

**F.** On July 1, 2011, Facebook moved to dismiss the Second Amended Complaint and all of its claims pursuant to Federal Rule of Civil Procedure 12(b)(1), for lack of Article III standing, and Federal Rule of Civil Procedure 12(b)(6), for failure to state a claim.

**G.** On December 16, 2011, the Court granted Facebook’s motion to dismiss with respect to the unjust enrichment claim but denied the motion with respect to the remaining two claims.

**H.** On January 9, 2012, Facebook filed its Answer to the Second Amended Complaint. The Answer denies the Second Amended Complaint's allegations of wrongdoing and raises several affirmative defenses.

**I.** On February 14, 2012, Plaintiffs filed a motion to dismiss the claims of Angel Fraley and Paul Wang without prejudice and to withdraw Angel Fraley and Paul Wang as class representatives. On March 13, 2012, the Court entered an order dismissing Angel Fraley and Paul Wang's claims without prejudice and granting their request to withdraw as class representatives.

**J.** On March 1, 2012, the Parties attended a full-day mediation before the Honorable Edward A. Infante (ret.) of JAMS. The Parties also submitted briefs and supporting papers to the mediator. Although a settlement was not reached at that time, with the assistance of the mediator, the Parties continued their arms-length settlement discussions after March 1, 2012.

**K.** On March 29, 2012, Plaintiffs filed a motion for class certification (along with supporting papers) pursuant to Federal Rule of Civil Procedure 23(b)(3), or in the alternative, Federal Rule of Civil Procedure 23(b)(2) or (c)(4). On April 19, 2012, Facebook filed an opposition (along with supporting papers) to Plaintiffs' motion for class certification. On May 3, 2012, Plaintiffs filed a reply (along with supporting papers) in support of their motion for class certification.

**L.** The Parties have engaged in extensive formal discovery for almost a full year, including depositions of fact witnesses and expert witnesses, requests for production of documents and written responses thereto, requests for admission and written responses thereto, interrogatories and written responses thereto, and production of documents and electronically stored information.

**M.** Based on the Parties' investigations, Plaintiffs believe the Action has merit, while Facebook believes the Action has no merit. The Parties have also each looked at the uncertainties of trial and the benefits to be obtained under the proposed Settlement, and have considered the costs, risks, and delays associated with the continued prosecution and defense of this complex and time-consuming litigation and the likely appeals of any rulings in favor of either Plaintiffs or Facebook.

**N.** Accordingly, it is now the intention of the Parties and the objective of this Settlement Agreement to avoid the costs, risks, and delays of continued litigation, including but not limited to trial and likely appellate proceedings, and settle and dispose of, fully and completely and forever, any and all claims and causes of action asserted or that could have been asserted in the Action.

**O.** The Parties previously entered a Settlement Agreement and Release with an execution date of June 14, 2012. Plaintiffs filed a motion for preliminary approval of that settlement on June 14, 2012 (Dkt. No. 181), and Facebook filed a brief in support of it two weeks later (Dkt. No. 188). On August 2, 2012, the Court held a hearing on Plaintiffs' preliminary approval motion. In an order dated August 17, 2012 (Dkt. No. 224) ("Order"), the Court denied the motion without prejudice, stating that the Parties "may elect to negotiate for modifications to their agreement" or "may present a renewed motion for preliminary approval of the existing agreement, with additional evidentiary and/or legal support directed at ameliorating the listed concerns." (Order at 2.) The Order further explained that, "[a]s discussed at the hearing, plaintiffs generally appear to have satisfied the prerequisites for preliminary approval of the settlement, except with respect to the issues discussed [in the Order]." (*Id.* at 8.)

P. Subsequent to this Court's Order, the Parties made several substantial modifications to their agreement, and they now enter into this Amended Settlement Agreement and Release.

#### AGREEMENT

1. **DEFINITIONS.** The following section defines terms, including terms that are not defined above. Some definitions use terms that are defined later in this section:

1.1 The terms "***Authorized Claimant***" or "***Authorized Claimants***" mean any Class Member (including Minor Class Member) who submits a valid and timely Claim Form consistent with Section 4.1 below and for whom Facebook's records reflect that the Class Member appeared in a Sponsored Story on or before the date of entry of the Preliminary Approval Order.

1.2 The terms "***Claim Form***" or "***Claim Forms***" mean the form Class Members (including Minor Subclass Members) must timely submit to receive payment under this Settlement Agreement. The Claim Form must be substantially similar to the form attached as Exhibit 5.

1.3 The term "***Claimant***" means any Class Member (including Minor Subclass Member) who submits a Claim Form under this Settlement Agreement.

1.4 The terms "***Class Counsel***" or "***Plaintiffs' Counsel***" mean the Arns Law Firm through Robert S. Arns and Jonathan Jaffe Law through Jonathan Jaffe.

1.5 The term "***Class Counsel's Fees and Costs***" means the reimbursement of attorneys' fees, costs, and expenses incurred by Class Counsel, if any, that is awarded by the Court to Class Counsel following the petition for such awards by Class Counsel as described in Section 2.5.

1.6 The terms "***Class***," "***Class Member***," and "***Class Members***" mean all persons in the United States who have or have had a Facebook account at any time and had their names, nicknames, pseudonyms, profile pictures, photographs, likenesses, or identities displayed in a Sponsored Story, at any time on or before the date of entry of the Preliminary Approval Order.

1.7 The term "***Court***" means the United States District Court for the Northern District of California.

1.8 The term "***Cy Pres Recipients***" shall mean any of the following entities that is approved by the Court for a *cy pres* distribution pursuant to Section 2.3 or Section 2.4: Center for Democracy and Technology, Electronic Frontier Foundation, MacArthur Foundation, Joan Ganz Cooney Center, Berkman Center for Internet and Society (Harvard Law School), Information Law Institute (NYU Law School), Berkeley Center for Law and Technology (Berkeley Law School), Center for Internet and Society (Stanford Law School), High Tech Law Institute (Santa Clara University School of Law), Campaign for Commercial-Free Childhood, Consumers Federation of America, Consumer Privacy Rights Fund, ConnectSafely.org, and WiredSafety.org.

1.9 The term "***Email Notice***" means the legal notice summarizing the proposed Settlement terms, as approved by Class Counsel, Facebook's Counsel, and the Court, to be provided to Class Members (including Minor Subclass Members), under Section 3.3 of this Agreement via electronic mail or the Facebook domain of [www.facebook.com](http://www.facebook.com). The Email Notice must be substantially similar to the form attached hereto as Exhibit 3.



**1.10** The term “*Escrow Agent*” means the entity that shall perform the escrow duties set forth in this Settlement. The Escrow Agent will be the Garden City Group, Inc. (“GCG”).

**1.11** The term “*Fairness Hearing*” means the hearing at which the Court will decide whether to approve this Settlement Agreement as being fair, reasonable, and adequate.

**1.12** The terms “*Final Order Approving Class Action Settlement and Judgment*” and “*Final Order and Judgment*” means a proposed order and judgment approving this Settlement. The Final Order and Judgment must be in substantially similar form as Exhibit 7 attached hereto.

**1.13** The term “*Final Settlement Date*” means two Court days after the Final Order and Judgment become “final.” For the purposes of this Section 1.13, “final” means (a) if no appeal from the Final Order and Judgment is filed, the expiration of the time for the filing or noticing of any appeal from the Final Order and Judgment; (b) if an appeal from the Final Order and Judgment is filed, the date on which all appeals therefrom, including but not limited to petitions for rehearing or re-argument, petitions for rehearing en banc, and petitions for certiorari or any other form of review, have been finally disposed of in a manner that affirms the Final Order and Judgment; or (c) if the Class Counsel and Facebook’s Counsel agree in writing, “Final Settlement Date” can occur on any other agreed upon date.

**1.14** The term “*Facebook’s Counsel*” means the law firm of Cooley LLP.

**1.15** The term “*Incentive Awards*” means the service awards, if any, awarded by the Court to Plaintiffs following the petition for such awards by Plaintiffs as described in Section 2.6.

**1.16** The term “*Long Form Notice*” means the legal notice of the proposed Settlement terms, as approved by Class Counsel, Facebook’s Counsel, and the Court, to be provided to Class Members (including Minor Subclass Members) under Section 3.3 of this Agreement. The Long Form Notice must be substantially similar to the form attached hereto as Exhibit 2.

**1.17** The terms “*Minor Subclass*,” “*Minor Subclass Member*,” and “*Minor Subclass Members*” mean all persons in the Class who additionally have or have had a Facebook account at any time and had their names, nicknames, pseudonyms, profile pictures, photographs, likenesses, or identities displayed in a Sponsored Story, while under eighteen (18) years of age, or under any other applicable age of majority, at any time on or before the date of entry of the Preliminary Approval Order.

**1.18** The term “*Net Settlement Fund*” means the Settlement Fund, plus any interest or investment income earned on the Settlement Fund, less all of the following: the costs of Taxes; Tax Expenses; Class Counsel’s Fees and Costs; Plaintiffs’ Incentive Awards; the costs incurred by the Escrow Agent and Settlement Administrator; and the costs of delivering notice to the Class.

**1.19** The term “*Objection, Opt-Out, and Claim Deadline*” means one hundred and fifty (150) calendar days after entry of the Preliminary Approval Order (*i.e.*, sixty (60) calendar days after the transmission of the Email Notice pursuant to Section 3.3(b) is to be completed).

**1.20** The terms “*Opt-Out Form*” or “*Opt-Out Forms*” mean the form Class Members (including Minor Subclass Members) must timely submit in order to make an exclusion request



pursuant to Section 3.8. The Opt-Out Form shall be substantially similar to the form attached as Exhibit 6.

**1.21** The term “*Preliminary Approval of Class Settlement and Provisional Class Certification Order*” or “*Preliminary Approval Order*” means an order preliminarily approving the Settlement of this Action and provisionally certifying the Class for settlement purposes only. This order must be in substantially similar form as Exhibit 1 attached hereto.

**1.22** The term “*Publication Notice*” means the legal notice summarizing the proposed Settlement terms, as approved by Class Counsel, Facebook’s Counsel, and the Court, to be provided to Class Members (including Minor Subclass Members), under Section 3.3 of this Agreement via publication. The Publication Notice must be substantially similar to the form attached hereto as Exhibit 4.

**1.23** The term “*Released Claims*” is defined in Section 5.2 below.

**1.24** The term “*Released Parties*” is defined in Section 5.2 below.

**1.25** The term “*Releasing Parties*” is defined in Section 5.2 below.

**1.26** The term “*Settlement Administrator*” means the entity that shall perform the settlement administration duties set forth in this Settlement. The Settlement Administrator will be GCG.

**1.27** The term “*Settlement Fund*” means twenty million dollars (\$20,000,000).

**1.28** The term “*Settlement Website*” means a website set up by the Settlement Administrator for the purposes of providing the Class with notice of the proposed Settlement.

**1.29** The term “*Sponsored Stories*” or “*Sponsored Story*” means content displayed by or on behalf of Facebook that Facebook refers to or markets as “Sponsored Stories.” Without limiting the generality of the foregoing definition, Sponsored Stories are typically posts about or from a Facebook user or entity that a business, organization, or individual has paid to promote so there is a better chance that the posts will be seen by the user or entity’s chosen audience. They may be displayed, for example, when a Facebook user interacts with the Facebook service (including sub-domains, international versions, widgets, plug-ins, platform applications or games, and mobile applications) in certain ways, such as by clicking on the “Like” button on a business’s, organization’s or individual’s Facebook page. Sponsored Stories typically include a display of a Facebook user’s Facebook name (i.e., the name the user has associated with his or her Facebook account) and/or profile picture (if the user has uploaded one) with a statement describing the user’s interaction with the Facebook service, such as “John Smith likes UNICEF,” “John Smith played Farmville,” or “John Smith shared a link.” For illustrative purposes only (and without limiting the definition to those examples depicted), Exhibit 8 hereto shows examples of Sponsored Stories.

**1.30** The term “*Taxes*” means all taxes (including any estimated taxes, interest, or penalties) arising with respect to the income earned by the Settlement Fund.

**1.31** The term “*Tax Expenses*” means expenses and costs incurred in connection with the calculation and payment of taxes or the preparation of tax returns and related documents

(including, without limitation, expenses of tax attorneys and/or accountants and costs and expenses relating to filing (or failing to file) the returns).

## 2. SETTLEMENT TERMS

**2.1 Class Relief.** For U.S. users, Facebook agrees to take the following measures within a reasonable time not to exceed six months following the Final Settlement Date:

- (a) **Revision of Facebook's Terms of Use.** In addition to other changes Facebook reserves the right to make to section 10.1 of its Statement of Rights and Responsibilities, Facebook will revise section 10.1 to include language reading substantially as follows:

### **About Advertisements and Other Commercial Content Served or Enhanced by Facebook**

Our goal is to deliver advertising and other commercial or sponsored content, such as Facebook Ads and Sponsored Stories, that is valuable to our users and advertisers. In order to help us do that, you agree to the following:

You give us permission to use your name, profile picture, content, and information in connection with commercial, sponsored, or related content (such as a brand you like) served or enhanced by us. This means, for example, that you permit a business or other entity to pay us to display your name and/or profile picture with your content or information. If you have selected a specific audience for your content or information, we will respect your choice when we use it.

If you are under the age of eighteen (18), or under any other applicable age of majority, you represent that at least one of your parents or legal guardians has also agreed to the terms of this section (and the use of your name, profile picture, content, and information) on your behalf.

- (b) **User Visibility and Control Over Sponsored Stories.** Facebook will create an easily accessible mechanism that enables users to view, on a going-forward basis, the subset of their interactions and other content on Facebook that have been displayed in Sponsored Stories (if any). Facebook will further engineer settings to enable users, upon viewing the interactions and other content that are being displayed in Sponsored Stories, to control which of these interactions and other content are eligible to appear in additional Sponsored Stories. Without limiting the foregoing, but for the sake of clarity, these settings will include the ability to enable users to prevent individual interactions and other content (or categories of interactions and other content) from appearing in additional Sponsored Stories.

(c) **Relief for Minor Subclass.**

- (i) **Revision of Facebook’s Terms of Use.** Facebook will revise its Statement of Rights and Responsibilities to provide that Facebook users under the age of eighteen (18), or under any other applicable age of majority, represent that their parent or legal guardian consents to the use of their name and likeness in connection with commercial, sponsored, or related content, as set forth in the revised section 10.1 of the Statement of Rights and Responsibilities (see Section 2.1(a) above).
- (ii) **Confirmed Parental Relationships.** Facebook will encourage new users, upon or soon after joining Facebook, to include in their profile information their family, including their parents and children. Where both a parent and a minor child are users and confirm their relationship, Facebook’s systems will record this confirmed parent/child relationship and utilize it as further described below.
- (iii) **Parental Controls.** Facebook will add an easily accessible link in the Family Safety Center (<https://www.facebook.com/safety>) to the tool it currently provides that enables parents to prevent the names and likenesses of their minor children from appearing alongside Facebook Ads (currently available at <https://www.facebook.com/help/contact/328678960533614>) and Facebook will extend this tool to enable parents to also prevent the names and likenesses of their minor children from appearing in Sponsored Stories. Facebook will also implement a method for enabling parents with a confirmed parental relationship with a minor user to utilize this tool through their own Facebook accounts, without obtaining access to their children’s accounts. Finally, Facebook will add a control in minor users’ profiles that enables each minor user to indicate that his or her parents are not Facebook users. Where a minor user indicates that his or her parents are not on Facebook, Facebook will make the minor ineligible to appear in Sponsored Stories until he or she reaches the age of 18, until the minor changes his or her setting to indicate that his or her parents are on Facebook, or until a confirmed parental relationship with the minor user is established.
- (iv) **Parental Educational Information.** Facebook will add a clear, easily understandable description of how advertising works on Facebook to the “parents” section of its Family Safety Center (<https://www.facebook.com/safety>). Facebook will also create and show advertising to users with a confirmed parental relationship with a minor user, directing them to the Family Safety Center, and/or other parent-specific resources on Facebook.

- (d) **Additional Educational Information.** For a period of up to ninety (90) calendar days following the Final Settlement Date, Facebook agrees to make a good faith effort to work with Plaintiffs, through Plaintiffs’ Counsel, to identify

any educational or other information on [www.facebook.com](http://www.facebook.com) that in Plaintiffs' view does not accurately or sufficiently explain how advertising works on Facebook. Facebook will endeavor to clarify such language.

- (e) **Compliance Audit If Court Ordered.** For a period of two years following the Final Settlement Date, Class Counsel shall have the right to move the Court, for good cause shown, for an order requiring one third-party audit to confirm compliance with the provisions of subparts (a) through (d) of Section 2.1 of this Agreement, and Facebook shall have the right to oppose such a motion. In the event the Court requires such a third-party audit, Facebook agrees to conduct a total of one such audit during the two-year period at its own expense and provide the results thereof to Class Counsel.

Once implemented, the measures described above in this Section 2.1 will remain in place until, at least, a date that is two years after the Final Settlement Date. Nothing described in this Section 2.1 above will inhibit, prevent, or limit Facebook from making product changes, changes to its terms of use (currently referred to as the "Statement of Rights and Responsibilities"), changes to product names or other terminology, or other changes, from time to time, as it deems appropriate in the conduct of its business, provided that such changes are consistent with the relief described above, or to comply with the law.

**2.2 Settlement Fund.** The Settlement Fund shall be used for the payment of the costs of Taxes; Tax Expenses; Class Counsel's Fees and Costs; Plaintiffs' Incentive Awards; the costs incurred by the Escrow Agent and Settlement Administrator; the costs of delivering notice to the Class; and the claims of Authorized Claimants, and/or the distributions to *Cy Pres* Recipients described in Section 2.3 and Section 2.4. If any interest or other investment income is earned on the Settlement Fund while in the control of the Escrow Agent, such interest shall be included in the Net Settlement Fund and disbursed as part of the Settlement or, if the Final Settlement Date does not occur, returned to Facebook as provided below.

- (a) Within twenty-one (21) calendar days after entry of the Preliminary Approval Order, Facebook shall cause to be paid into an interest-bearing account designated and controlled by the Escrow Agent that portion of the Settlement Fund projected to be adequate to pay for the costs of delivering notice to the Class (as described in Section 3.3 below), based on reasonable estimates provided by the Settlement Administrator and/or any third-party vendor contemplated to be responsible for delivering notice. For the sake of clarity, this payment into the escrow account will exclude any amounts for payment of Class Counsel's Fees and Costs, Plaintiffs' Incentive Awards, and the claims of Authorized Claimants, and/or the distributions to *Cy Pres* Recipients described in Section 2.3 and Section 2.4.
- (b) Thereafter, Facebook may, at its discretion, cause to be paid into the escrow account additional portions of the Settlement Fund for the purposes of paying any additional costs of delivering notice to the Class, any costs incurred by the Escrow Agent and Settlement Administrator, any costs of Taxes, or any Tax Expenses. For the sake of clarity, these payments into the escrow account will exclude any amounts for payment of Class Counsel's Fees and Costs, Plaintiffs'

Incentive Awards, and the claims of Authorized Claimants, and/or the distributions to *Cy Pres* Recipients described in Section 2.3 and Section 2.4.

- (c) Within five (5) business days after the Final Settlement Date, Facebook shall cause to be paid into the escrow account the remaining portion of the Settlement Fund that has not previously been paid into the escrow account.
- (d) All funds held by the Escrow Agent shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to the Settlement Agreement and/or further order(s) of the Court.
- (e) Upon five (5) business days notice to Class Counsel and Facebook's Counsel, the Escrow Agent may pay itself and the Settlement Administrator their costs reasonably and actually incurred in their roles as the Settlement Administrator and Escrow Agent.
- (f) The Settlement Fund is the total amount that Facebook will pay under this Settlement for any purpose, including without limitation, to satisfy claims by Class Members (including Minor Subclass Members), Class Counsel's Fees and Costs, Incentive Awards, the costs of delivering notice to the Class, and the costs incurred by the Settlement Administrator and Escrow Agent. Class Members (including Minor Subclass Members) shall look solely to the Settlement Fund for settlement and satisfaction against Facebook of all Released Claims. Except as expressly provided by order of the Court, no Class Member (including Minor Subclass Member) shall have any interest in the Settlement Fund or any portion thereof.

**2.3 Relief Provided to Class.** Each Authorized Claimant, subject to the limitations stated below regarding proration of claims or distribution to the *Cy Pres* Recipients, is entitled to a one-time cash payment equal to ten dollars (\$10).

- (a) If payment of \$10 to all Authorized Claimants would exhaust the Net Settlement Fund, the following procedures shall be followed.
  - (i) The Settlement Administrator shall distribute the Net Settlement Fund pro rata to each Authorized Claimant.
  - (ii) Notwithstanding Section 2.3(a)(i), if, given the number of Authorized Claimants, each Authorized Claimant's pro-rata share of the Net Settlement Fund would be less than five dollars (\$5), the Court may, in its discretion, in the Final Order and Judgment either (A) order the Settlement Administrator to distribute the Net Settlement Fund pro rata to each Authorized Claimant, or (B) order the Settlement Administrator to distribute the entire Net Settlement Fund to the *Cy Pres* Recipients, as described in greater detail below in Section 2.4. If Court, in its Final Order and Judgment, does not address the disposition of the Net Settlement Fund under this Section 2.3(a)(ii), the Settlement

Administrator shall distribute the Net Settlement Fund pro rata to each Authorized Claimant.

(iii) Notwithstanding Section 2.3(a)(ii), if it is not economically feasible to make any pro rata payment to the Authorized Claimants without exceeding the Net Settlement Fund, the Settlement Administrator shall distribute the entire Net Settlement Fund to the *Cy Pres* Recipients, as described in greater detail below in Section 2.4.

(b) If payment of \$10 to all Authorized Claimants would not exhaust the Net Settlement Fund, the Settlement Administrator shall first (i) distribute \$10 to each Authorized Claimant and then (ii) distribute to the *Cy Pres* Recipients any proceeds remaining in the Net Settlement Fund, as described in greater detail below in Section 2.4. Notwithstanding the foregoing and subject to Section 2.3(a)(iii), the Court may, in its discretion, order the Settlement Administrator to (i) increase the pro rata payment to each Authorized Claimant such that the total payment to each Authorized Claimant would exceed \$10 and (ii) then distribute to the *Cy Pres* Recipients any proceeds remaining in the Net Settlement Fund, as described in greater detail below in Section 2.4.

(c) **Manner of Payment.** Payments shall be made by ACH (Automated Clearing House) transfer to the Authorized Claimants. Alternatively, the Class Member may elect to receive payment by physical check. The Claim Form will contain spaces for Class Members to elect the manner of payment and to provide the Settlement Administrator with their payment information.

(d) **Timing of Payment.** The Net Settlement Fund shall be distributed to Authorized Claimants between thirty (30) and forty-five (45) calendar days after the Final Settlement Date.

(e) **Time to Cash Settlement Checks and Treatment of Undeliverable Checks.** Authorized Claimants who receive a physical check shall have ninety (90) calendar days within which to cash the issued check. Any funds from checks not cashed within that ninety (90) calendar day period or funds from checks returned as undeliverable shall be returned to the Net Settlement Fund and distributed to the *Cy Pres* Recipients, as described in greater detail below in Section 2.4. Additionally, if an Authorized Claimant who elects payment by ACH fails to provide sufficient or correct information to permit payment to an account, the amount of that failed payment shall revert to the Net Settlement Fund.

**2.4 *Cy Pres* Distribution.** The following procedures shall govern the distribution of proceeds, if any, from the Net Settlement Fund to the *Cy Pres* Recipients.

(a) **Allocation of *Cy Pres* Distribution.** Subject to Court approval, any *cy pres* distributions shall be allocated to the *Cy Pres* Recipients according to the following percentages: Center for Democracy and Technology (10% of *cy pres* distribution), Electronic Frontier Foundation (10%), MacArthur Foundation



(10%), Joan Ganz Cooney Center (10%), Berkman Center for Internet and Society (Harvard Law School) (6%), Information Law Institute (NYU Law School) (6%), Berkeley Center for Law and Technology (Berkeley Law School) (6%), Center for Internet and Society (Stanford Law School) (6%), High Tech Law Institute (Santa Clara University School of Law) (6%), Campaign for Commercial-Free Childhood (6%), Consumers Federation of America (6%), Consumer Privacy Rights Fund (6%), ConnectSafely.org (6%), and WiredSafety.org (6%).

- (b) **Timing of *Cy Pres* Distribution.** Any proceeds from the Net Settlement Fund that will be distributed to the *Cy Pres* Recipients shall be distributed by the Settlement Administrator to the *Cy Pres* Recipients between thirty (30) and forty-five (45) calendar days after the deadline for Class Members to cash the settlement checks pursuant to Section 2.3(d). Alternatively, in the event that the entire Net Settlement Fund is to be distributed to the *Cy Pres* Recipients under the terms of this agreement or as ordered by the Court, the Settlement Administrator shall distribute such proceeds to the *Cy Pres* Recipients between thirty (30) and forty-five (45) calendar days after the Final Settlement Date.

**2.5 Class Counsel's Fees and Costs.** Plaintiffs may file a motion with the Court seeking a portion of the Settlement Fund as payment of any reasonable attorneys' fees, plus reimbursement of actual costs and expenses, including experts or consultants, incurred in connection with prosecuting the Action.

- (a) Class Counsel shall file any such motion for Class Counsel's Fees and Costs, along with any papers supporting the motion, with the Court on or before twenty-three (23) days after entry of the Preliminary Approval Order. Class Counsel's motion for payment of Class Counsel's Fees and Costs shall be available on the Settlement Website once the Settlement Website becomes active. Additionally, the total amount of attorneys' fees, costs, and expenses sought by Class Counsel shall be disclosed in the Long-Form Notice.
- (b) The Settlement Administrator will distribute from the Settlement Fund any Class Counsel's Fees and Costs awarded by the Court within fourteen (14) days after the Final Settlement Date.
- (c) The Arns Law Firm shall have sole responsibility to distribute any payment of Class Counsel's Fees and Costs to Jonathan Jaffe Law and any other attorney or law firm that may claim they are owed fees, costs, or expenses under this Settlement.

**2.6 Incentive Award to Plaintiffs.** Plaintiffs agree not to petition the Court for more than \$12,500 (each) for an Incentive Award. Facebook further agrees that it will not take a position on the amount of any incentive award requested unless asked by the Court to express views thereon. The Settlement Administrator will pay the Incentive Awards approved by the Court to Plaintiffs (Susan Mainzer, James H. Duval, and W.T., a minor, by and through Russell Tait) from the Settlement Fund within fourteen (14) days after the Final Settlement Date.



**2.7 Relationship of Attorneys' Fees, Costs, and Expenses and Incentive Award(s) to Class Relief.** It is not a condition of this Settlement that any particular amount of attorneys' fees, costs, or expenses or incentive awards be approved by the Court, or that such fees, costs, expenses, or awards be approved at all. Any order or proceeding relating to the amount of any award of attorneys' fees, costs, or expenses or incentive awards, or any appeal from any order relating thereto, or reversal or modification thereof, shall not operate to modify, terminate, or cancel this Settlement, or affect or delay the finality of the Final Order and Judgment.

**2.8 Releases.** The Parties agree that the releases stated in Sections 5.2 and 5.3 are material parts of this Settlement and are hereby incorporated into this Section 2 as if fully stated herein.

### **3. CLASS SETTLEMENT PROCEDURES**

**3.1 Cooperation to Obtain Court Approval.** The Parties will jointly take all reasonable steps necessary to secure the Court's approval of this Settlement.

**3.2 Preliminary Approval of Class Settlement and Provisional Class Certification.** As set forth below, the Parties shall take all reasonable steps to secure the Court's entry of a Preliminary Approval Order in substantially similar form to Exhibit 1.

- (a) As soon as practicable after the Settlement's execution date, but in any event no later than ten (10) days after the execution date, the Parties shall jointly move the Court for an order to:
  - (i) preliminarily approve this Settlement on the ground it "appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval[.]" *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007);
  - (ii) approve the form, manner, and content of the Long Form Notice, Email Notice, Publication Notice, Claim Form, and Opt-Out Form as described in Section 3.3 below and attached hereto as Exhibits 2-6, respectively;
  - (iii) find that Facebook has complied with 28 U.S.C. § 1715(b);
  - (iv) set the date and time of the Fairness Hearing, with the hearing being set no earlier than one hundred and ninety-five (195) calendar days after entry of the Preliminary Approval of Class Settlement and Provisional Class Certification Order; and
  - (v) stay all proceedings in the Action until the Court renders a final decision on approval of the Settlement.
- (b) Concurrently with the joint motion for preliminary approval of the Settlement, Plaintiffs shall move for an order to:

- (i) provisionally certify the Class and Minor Subclass under Federal Rule of Civil Procedure 23(b)(3) for settlement purposes only;
- (ii) appoint Plaintiffs as class representatives for settlement purposes only; and
- (iii) appoint the Arns Law Firm and Jonathan Jaffe Law as Class Counsel for settlement purposes only.

**3.3 Notice.** Subject to the Court approving the Preliminary Approval Order, the Parties agree that the Class shall be provided with notice of the proposed Settlement by the following methods.

- (a) **Settlement Website.** Starting no later than thirty (30) calendar days after entry of the Preliminary Approval Order, the Settlement Administrator will set up a website and post the Long Form Notice, Claim Form, and Opt-Out Form. The Settlement Website will also allow for electronic submission through the website of the Claim Form and Opt-Out Form. The website will be active until thirty-one (31) calendar days after the Final Settlement Date. However, the Settlement Administrator may disable online submission of the Claim Form and Opt-Out Form the day after the Objection, Opt-Out, and Claim Deadline. Facebook retains sole and exclusive discretion to select the name of the URL (Internet address), to which Plaintiffs shall not object absent manifest good cause.
- (b) **Short Form Notice by Email.** Starting no later than thirty (30) calendar days after entry of the Preliminary Approval Order, Facebook or its designee will begin the transmission of the Email Notice provided for in this Settlement.
  - (i) Facebook or its designee will transmit the Notice as follows:
    - (1) Transmit the Email Notice by email to each Class Member (including Minor Subclass Members) for whom Facebook has a valid email address, including persons who previously indicated that they do not wish to receive any communications from Facebook. At Facebook's sole discretion, all or part of such email distribution may be effected through a third-party vendor or the Settlement Administrator.
    - (ii) For the purposes of this notice, Facebook will use reasonable efforts to ascertain which Facebook users whose names or profile pictures appeared in a Sponsored Story are located within the United States.
    - (iii) Facebook or its designee will have up to and including ninety (90) calendar days after entry of the Preliminary Approval Order to complete transmission of the Email Notice. Facebook or its designee may carry out the transmission of the Email Notice over this period of ninety (90) calendar days to accommodate technical limitations,

including, for instance, if the Email Notice is transmitted by email, to avoid the risk that the Email Notice would be blocked by Internet Service Providers.

- (iv) The Email Notice will be substantially similar to the form attached as Exhibit 3, and will provide the URL (Internet address) of the Settlement Website containing the Long Form Notice and a U.S. postal address and an email address to contact the Settlement Administrator.
- (c) **Publication Notice.** Between thirty (30) and ninety (90) calendar days after entry of the Preliminary Approval Order, the Settlement Administrator will cause the Publication Notice to be published (i) three times in an insertion in the national Monday-Thursday edition of the *USA Today* newspaper, and (ii) once by transmission through PR Newswire's US1 distribution service. The Publication Notice will be substantially similar to the form attached as Exhibit 4, and will provide the URL (Internet address) of the Settlement Website containing the Long Form Notice and a U.S. postal address and an email address to contact the Settlement Administrator.
- (d) As stated previously, the costs associated with providing all forms of notice referenced in this Section 3.3 shall be paid out of the Settlement Fund.

**3.4 CAFA Notice.** After the Settlement Agreement is filed with the Court, Facebook shall serve upon the relevant government officials notice of the proposed Settlement in accordance with 28 U.S.C. § 1715. Shortly after providing CAFA notice, and prior to the preliminary approval hearing, Facebook will submit a proof of service of such notice with the Court.

**3.5 Inquiries from Class Members.** The Settlement Administrator will establish an email account and P.O. Box to which Class Members (including Minor Class Members) may submit questions regarding the Settlement. The Settlement Administrator will monitor the email account and P.O. Box and respond promptly to inquiries received from Class Members.

**3.6 Proof of Notice.** No later than ten (10) calendar days after the Objection, Opt-Out, and Claim Deadline, Facebook must serve a declaration on Class Counsel confirming that the Settlement Administrator and/or Facebook (or a third-party vendor retained by either) provided the Class with notice of the proposed Settlement in accordance with Section 3.3.

**3.7 Objections.** Any Class Member (including any Minor Subclass Member) who has not submitted a timely written exclusion request pursuant to Section 3.8 below and who wishes to object to the fairness, reasonableness, or adequacy of the Settlement Agreement or the proposed Settlement, or to Class Counsel's Fees and Costs or Incentive Awards, must follow the following procedure:

- (a) **Content of Objections.** Written objections must be verified by a declaration under the penalty of perjury or a sworn affidavit and must include: (a) the name of the Action and case number, "*Fraley v. Facebook, Inc.*, Case No. CV-11-01726 RS"; (b) the full name, address, telephone number, and email address associated with the Facebook account of the person objecting; and (c) an

explanation detailing the specific reasons for each objection, including any legal and factual support the objector wishes to bring to the Court's attention and any evidence the objector wishes to introduce in support of the objection(s). Objectors must provide the email address associated with their Facebook account to Class Counsel and Facebook's Counsel so that they can verify whether the objector is a Class or Minor Subclass Member.

- (b) **Manner of Service of Objections.** Service of an objection may be done in one of two ways. It shall be the objector's responsibility to ensure receipt of any objection by the Court or the Settlement Administrator.
- (i) **Service on Settlement Administrator.** Objecting Class Members may deliver written objections to the Settlement Administrator by postal mail or electronic mail.<sup>1</sup>
- (ii) **ECF Filing.** Alternatively, if the objector is represented by counsel, the objection may be filed with the Court and served on Facebook and Plaintiffs through the Court's electronic case filing ("ECF") system located at <https://ecf.cand.uscourts.gov/cand/index.html>. An objection filed with the Court via ECF may redact the objecting individual's telephone number or email address, so long as the unredacted version is served on Class and Facebook Counsel.
- (c) **Deadline for Objections.** Objections must be delivered on or before the Objection, Opt-Out, and Claim Deadline. The delivery and file date of an objection is deemed to be: (a) if mailed to the Settlement Administrator, the date the objection is deposited in the U.S. Mail or equivalent foreign system, with postage paid by the objector, as evidenced by the postmark, (b) if emailed to the Settlement Administrator, the date reflected on the transmission record, or (c) if filed with the Court electronically and served on the Parties via the Court's ECF system, the date reflected on the objection's "notice of electronic filing." For the purposes of email and ECF transmission, transmission must be complete by 11:59 p.m. (Pacific) on the Objection, Opt-Out, and Claim Deadline.
- (d) **Attendance at Fairness Hearing.** Any Class Member (including any Minor Subclass Member) who files and serves a written objection, as described in this Section 3.7, has the option to appear at the Fairness Hearing, either in person or through personal counsel hired at the Class Member's expense, to object to the

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<sup>1</sup> Every Friday starting the date on which Email Notice begins to be provided under Section 3.3(b), the Settlement Administrator will email to Facebook's Counsel and Class Counsel any objections it received during the prior week. After the Objection, Opt-Out, and Claim Deadline, the Settlement Administrator will compile all objections it received, with an index, which Plaintiffs will file with the Court prior to the filing deadline for Plaintiffs' brief in support of the Final Order and Judgment. Plaintiffs shall redact Class Members' telephone numbers and email addresses when filing the objections.

fairness, reasonableness, or adequacy of the Settlement Agreement or the proposed Settlement, or to the award of attorneys' fees or costs. However, Class Members or their attorneys intending to make an appearance at the Fairness Hearing must also deliver, pursuant to the procedures set forth in Section 3.7(b), a Notice of Intention to Appear no later than the Objection, Opt-Out, and Claim Deadline. As an alternative to a Notice of Intention to Appear, Class Members may state in their objections that they intend to appear and speak at the Fairness Hearing. Only Class Members who file and serve timely objections and give notice to the Court, Class Counsel, and Facebook's counsel that they intend to speak at the Fairness Hearing may do so, unless the Court orders otherwise. If a Class Member makes an objection through an attorney, the Class Member will be responsible for his or her personal attorney's fees and costs.

**3.8 Exclusion Requests.** Class Members (including Minor Subclass Members) may elect not to be part of the Class and not to be bound by this Settlement Agreement.

- (a) **Manner of Making Exclusion Request.** To make an exclusion request, Class Members must timely submit a complete Opt-Out Form. If sent by mail, the Opt-Out Form must be postmarked no later than the Objection, Opt-Out, and Claim Deadline, with postage paid by the person requesting exclusion. If submitted electronically, the Opt-Out Form must be submitted by 11:59 p.m. (Pacific), on or before the Objection, Opt-Out, and Claim Deadline. The exclusion request must be made on the Opt-Out Form. So-called "mass" or "class" opt-outs purporting to be made on behalf of multiple persons or classes of persons shall not be allowed. Any Class Member who does not transmit a valid and timely Opt-Out Form shall be bound by all subsequent proceedings, orders, and judgments. Only Class Members who transmit valid and timely Opt-Out Forms will be deemed to have opted out of the Class, unless the Court orders otherwise.
- (b) **Exclusion List.** The Settlement Administrator shall serve on Facebook's Counsel and Class Counsel a list of Class Members who have timely and validly excluded themselves from the Class no later than ten (10) calendar days after the Objection, Opt-Out, and Claim Deadline.
- (c) **Termination Clause.** If more than twelve thousand five hundred (12,500) Class Members timely and validly request exclusion, then Facebook may, in its sole discretion, at any time on or before ten (10) calendar days after the Objection, Opt-Out, and Claim Deadline, notify Class Counsel in writing that it has elected to terminate this Settlement Agreement. If this Settlement Agreement is terminated, it will be deemed null and void *ab initio*. In that event: (i) the Provisional Class Certification Order and all of its provisions will be vacated by its own terms; (ii) the Action will revert to the status that existed before the Settlement Agreement's execution date; and (iii) no term or draft of this Settlement Agreement, or any part or aspect of the Parties' settlement discussions, negotiations, or documentation (including any declarations and briefs filed in support of the motion for preliminary or final approval) will have

any effect or be admissible into evidence, for any purpose, in this Action or any other proceeding. The Parties expressly acknowledge that in the event this termination clause is invoked, then Section 6.1 of this Settlement applies, and therefore they expressly incorporate Section 6.1's terms by this reference as if set forth fully herein.

**3.9 Final Order and Judgment.** Before the Fairness Hearing, and assuming no exercise of the Termination Clause in Section 3.8(c) of this Agreement, Plaintiffs must apply for Court approval of a proposed Final Order Approving Class Action Settlement and Judgment, substantially similar to the form attached hereto as Exhibit 7. Subject to the Court's approval, the Final Order Approving Class Action Settlement and Judgment shall, among other things:

- (a) finally approve the Agreement and Settlement;
- (b) finally certify the Class for settlement purposes only, pursuant to Federal Rule of Civil Procedure 23(b)(3);
- (c) find that the notice and the notice dissemination methodology complied with the Settlement Agreement, Federal Rule of Civil Procedure 23, and the Due Process Clause of the United States Constitution;
- (d) issue orders related to the relief provided for in the Settlement Agreement, including injunctive relief, payment of Authorized Claimants and/or *cy pres* distribution, payment of Incentive Awards, and payment of Class Counsel's Fees and Costs;
- (e) incorporate the releases set forth in Section 5 of this Settlement Agreement;
- (f) dismiss the Action with prejudice; and
- (g) retain jurisdiction over the Action and the Parties relating to the administration, consummation, and/or enforcement of the Agreement and/or the Final Order and Final Judgment, and for any other necessary purpose.

With its application, Class Counsel must file with the Court a complete list of all Class Members who have validly and timely excluded themselves from the Class. Facebook will be entitled either to join in Plaintiffs' motion as a co-movant or to file a brief in support of Plaintiffs' motion, at Facebook's option. In either event, Facebook shall be permitted, but not required, to file its own brief or statement in support of the Final Order and Judgment up to and including seven (7) calendar days prior to the Fairness Hearing.

#### **4. CLAIMS ADMINISTRATION.**

**4.1 Claim Form.** To be entitled to receive class relief, as described in Section 2.2 and Section 2.3 above, a Class Member must timely and accurately complete and submit to the Settlement Administrator a Claim Form. The Claim Form shall be substantially similar to the form attached to this Agreement as Exhibit 5.



- (a) To be valid, on the Claim Form the Class Member must attest under the penalty of perjury: (a) the Class Member understands that a story about some action he or she took on Facebook (such as liking a page, checking in at a location, or sharing a link), along with his or her name and/or profile picture, may have been displayed in a Sponsored Story shown to his or her Facebook Friends who were authorized by the Class Member to see that action; (b) the Class Member was not aware that Facebook could be paid a fee for displaying actions such as these, along with the Class Member's name and/or profile picture, to his or her Facebook Friends; (c) the Class Member believes that, if his or her name and/or profile picture was displayed in a Sponsored Story, he or she was injured by that display; (d) the Class Member is submitting only one claim form regardless of how many Facebook accounts the Class Member has; and (e) the Class Member understands that he or she is releasing all claims against Facebook, and all other Released Parties, as set forth in Section 5. The Class Member must also provide the email address and User ID or username associated with his or her Facebook account, and the name associated with his or her Facebook account, whether or not such name is a pseudonym. Facebook's records must also reflect that the Class Member appeared in a Sponsored Story on or before the date of entry of the Preliminary Approval Order.
- (b) The Claim Form must be submitted no later than the Objection, Opt-Out and Claim Deadline. If sent by mail the Claim Form must be postmarked by the Objection, Opt-Out and Claim Deadline. If submitted electronically through the Settlement Website, it must be submitted by 11:59 p.m. (Pacific) on the Objection, Opt-Out and Claim Deadline.

**4.2 Claims Review Process.** The Settlement Administrator shall review all submitted Claim Forms within a reasonable time to determine each Claimant's eligibility for class relief. To be considered an "Authorized Claimant," a Claimant must submit a valid and timely Claim Form consistent with Section 4.1 and Facebook's records must reflect that the Claimant appeared in a Sponsored Story on or before the date of entry of the Preliminary Approval Order. Starting forty-five (45) calendar days after entry of the Preliminary Approval Order, the Settlement Administrator shall provide weekly reports to Facebook's Counsel and Class Counsel concerning the Claim Forms received during the prior week. Claim Forms that do not meet the submission requirements shall be rejected. Prior to rejection of a Claim Form, the Settlement Administrator shall communicate with the Claimant in an effort to remedy curable deficiencies in the Claim Form submitted. Thereafter, the Settlement Administrator shall notify, in a timely fashion, all Claimants whose Claim Forms the Settlement Administrator proposes to reject in whole or in part, setting forth the reasons therefore. If the Claim Form at issue was submitted by mail, the Class Member shall be notified by mail to the original address used. If the Claim Form at issue was submitted electronically, the Class Member shall be notified by email to the original email address identified in the submission. Should a Claimant dispute the Settlement Administrator's determination whether he or she is an Authorized Claimant, the matter shall be submitted to Class Counsel and Facebook's Counsel for resolution, and if no resolution is reached, the determination of the Settlement Administrator will be final.



## 5. DISMISSAL OF ACTION AND RELEASES

**5.1 Judgment and Enforcement.** The Parties agree that should the Court grant final approval of the proposed Settlement and enter the Final Judgment and Order, such Final Judgment and Order shall include a provision for the retention of the Court's jurisdiction over the Parties to enforce the terms of this Settlement Agreement.

**5.2 Class Members' Release.** Upon the entry of the Final Order and Judgment, Plaintiffs and all Class Members, including all Minor Subclass Members (and their parents or legal guardians on all Minor Subclass Members' behalf), who do not validly and timely request to be excluded from the proposed Settlement, and each of their respective successors, assigns, legatees, heirs, and personal representatives (collectively the "Releasing Parties") shall be deemed to have fully, finally, and forever released, relinquished, and discharged against Facebook and all other persons and entities, including but not limited to persons and entities that have purchased Sponsored Stories from Facebook, and each of their direct or indirect parents, wholly or majority-owned subsidiaries, affiliated and related entities, predecessors, successors and assigns, partners, privities, and any of their present and former directors, officers, employees, shareholders, agents, representatives, attorneys, accountants, insurers, and all persons acting by, through, under, or in concert with them, or any of them (collectively the "Released Parties"), all manner of action, causes of action, claims, demands, rights, suits, obligations, debts, contracts, agreements, promises, liabilities, damages, charges, penalties, losses, costs, expenses, and attorneys' fees, of any nature whatsoever, known or unknown claims, in law or equity, fixed or contingent, which the Releasing Parties have or may have against the Released Parties arising out of or relating to any of the acts, omissions, or other conduct that was or could have been alleged in the Action, including but not limited to any and all acts, omissions, or other conduct related to the display of any Class Member's name, nickname, pseudonym, profile picture, photograph, likeness, or identity in a Sponsored Story ("Released Claims").

**In addition, the Releasing Parties expressly waive and relinquish, to the fullest extent permitted by law, the provisions, rights, and benefits of Section 1542 of the California Civil Code, or any other similar provision under federal or state law, which provides:**

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

The Releasing Parties fully understand that the facts on which this Settlement Agreement is executed may be different from the facts now believed by the Releasing Parties and their Counsel to be true, and they expressly accept and assume the risk of this possible difference in facts and agree that this Settlement Agreement remains effective despite any difference in facts. Further, the Releasing Parties agree that this waiver is an essential and material term of this release and the Settlement that underlies it and that without such waiver the Settlement would not have been accepted.

**5.3 Plaintiffs' General Release.** Upon entry of the Final Order and Judgment, Plaintiffs Susan Mainzer, James H. Duval, and W.T., a minor, by and through Russell Tait as Guardian ad Litem, in their individual capacities only, and each of their successors, assigns, legatees, heirs, and

personal representatives release and forever discharge Facebook and its direct or indirect parents, wholly or majority-owned subsidiaries, affiliated and related entities, predecessors, successors and assigns, partners, privities, and any of its present and former directors, officers, employees, shareholders, agents, representatives, attorneys, accountants, insurers, and all persons acting by, through, under, or in concert with it, from all manner of action, causes of action, claims, demands, rights, suits, obligations, debts, contracts, agreements, promises, liabilities, damages, charges, penalties, losses, costs, expenses, and attorneys' fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent.

**In addition, Plaintiffs Susan Mainzer, James H. Duval, and W.T., a minor, by and through Russell Tait as Guardian ad Litem, in their individual capacities only, and each of their successors, assigns, legatees, heirs, and personal representatives, expressly waive and relinquish, to the fullest extent permitted by law, the provisions, rights, and benefits of Section 1542 of the California Civil Code, or any other similar provision under federal or state law, which provides:**

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

Plaintiffs fully understand that the facts on which this Settlement Agreement is executed may be different from the facts now believed by Plaintiffs and their Counsel to be true, and they expressly accept and assume the risk of this possible difference in facts and agree that this Settlement Agreement remains effective despite any difference in facts. Further, Plaintiffs agree that this waiver is an essential and material term of this release and the Settlement that underlies it and that without such waiver the Settlement would not have been accepted.

## **6. TERMINATION OF SETTLEMENT**

**6.1 Action Status if Settlement Not Approved.** This Settlement Agreement is being entered into for settlement purposes only. If the Court conditions its approval of either the Preliminary Approval Order or the Final Order and Judgment on any modifications of this Settlement Agreement that are not acceptable to all Parties, or if the Court does not approve the Settlement or enter the Final Order and Judgment, or if the Final Settlement Date cannot occur for any reason, then this Settlement Agreement will be deemed null and void *ab initio*. In that event: (a) the Preliminary Approval Order, the Final Order and Judgment (if applicable), and all of its or their provisions will be vacated by its or their own terms, including, but not limited to, vacating any and all rulings regarding class certification for settlement purposes, including conditional certification of the Class, conditional appointment of Plaintiffs as class representatives, and conditional appointment of Plaintiffs' Counsel as Class Counsel; (b) the Action will revert to the status that existed before the Settlement Agreement's execution date; and (c)(i) no term or draft of this Settlement Agreement, (ii) nor any part of the Parties' settlement discussions, negotiations, or documentation (including any declaration or brief filed in support of the motion for preliminary approval or motion for final approval), (iii) nor any rulings regarding class certification for settlement purposes (including the Preliminary Approval Order and, if applicable, the Final Order and Judgment), will have any effect or be admissible into evidence for any purpose in the Action or any other proceeding. If the Court does not approve the Settlement or

enter the Final Order and Judgment for any reason, or if the Final Settlement Date cannot occur for any reason, Facebook shall retain all its rights, for example, to object to the maintenance of the Action as a class action, to move for summary judgment, and to assert defenses at trial, and nothing in this Settlement Agreement or other papers or proceedings related to the Settlement shall be used as evidence or argument by any Party concerning whether the Action may properly be maintained as a class action, or for any other purpose.

**6.2 Treatment of Settlement Fund if Settlement Terminated.** Unless otherwise ordered by the Court, in the event the Settlement is terminated for any reason, then within ten (10) business days after the Parties have provided the Court with notice that they are invoking this Section 6.2, the Escrow Agent shall return the Settlement Fund (including accrued interest), less expenses and any costs which have either been disbursed or incurred, including Taxes and Tax Expenses, to Facebook pursuant to written instructions from Facebook's Counsel. At the request of Facebook's Counsel, the Escrow Agent or its designee shall apply for any tax refund owed on the Settlement Fund and pay the proceeds, after deduction of any fees or expenses incurred in connection with such application(s) for refund, to Facebook.

## **7. ADDITIONAL PROVISIONS**

**7.1 Facebook's Denial of Wrongdoing.** Facebook denies that it committed, or attempted to commit, any violations of law with respect to its users or otherwise. Facebook also denies that Plaintiffs and the Class have suffered any injury or damages as a result of conduct alleged in the Action. Facebook maintains that it has meritorious defenses to all the claims alleged in the Action. Nonetheless, Facebook believes that further litigation could be protracted, burdensome, expensive, and distracting. Facebook has also determined that further litigation would divert resources and attention from other activities important to its business interests. Thus, Facebook has concluded that it is desirable and beneficial to settle the Action on the terms and conditions set forth in this Settlement.

**7.2 No Tax Liability.** Under no circumstances will Facebook or Facebook's Counsel have any liability for taxes or tax expenses under the Settlement. Plaintiffs, Plaintiffs' Counsel, Class Members, and the recipients of *cy pres* funds are responsible for any taxes on their respective recoveries or awards. Nothing in this Settlement Agreement, or statements made during the negotiation of its terms, shall constitute tax advice by Facebook or Facebook's Counsel.

**7.3 Change of Time Periods.** All time periods and dates described in this Settlement Agreement are subject to the Court's approval. These time periods and dates may be changed by the Court or by the Parties' written agreement without notice to the Class or Minor Subclass. The Parties reserve the right, subject to the Court's approval, to make any reasonable extensions of time that might be necessary to carry out any provisions of this Agreement.

**7.4 Real Parties in Interest.** In executing this Settlement Agreement, the Parties warrant and represent that they, including Plaintiffs in their representative capacity on behalf of the Class and Minor Subclass, are the only persons having any interest in the claims asserted in this Action. Neither these claims, nor any part of these claims, have been assigned, granted, or transferred in any way to any other person, firm, or entity.

**7.5 Voluntary Agreement.** The Parties executed this Settlement Agreement voluntarily and without duress or undue influence.

**7.6 Binding on Successors, etc.** This Settlement Agreement binds and benefits the Parties' respective successors, assigns, legatees, heirs, and personal representatives.

**7.7 Parties Represented by Counsel.** The Parties acknowledge that: (a) they have been represented by independent counsel of their own choosing during the negotiation of this Settlement and the preparation of this Settlement Agreement; (b) they have read this Settlement Agreement and are fully aware of its contents; and (c) their respective counsel fully explained to them the Settlement Agreement and its legal effect.

**7.8 Authorization.** Each Party warrants and represents that there are no liens or claims of lien or assignments, in law or equity, against any of the claims or causes of action released by this Settlement Agreement and, further, that each Party is fully entitled and duly authorized to give this complete and final release and discharge.

**7.9 Entire Agreement.** This Settlement and attached exhibits contain the entire agreement between the Parties and constitute the complete, final, and exclusive embodiment of their agreement with respect to the Action. This Settlement is executed without reliance on any promise, representation, or warranty by any Party or any Party's representative other than those expressly set forth in this Settlement and any such prior promises, representations, or warranties relating to this Action are null and void.

**7.10 Construction and Interpretation.** Neither Party nor any of the Parties' respective attorneys will be deemed the drafter of this Settlement Agreement for purposes of interpreting any provision in this Settlement Agreement in any judicial or other proceeding that may arise between them. This Settlement Agreement has been, and must be construed to have been, drafted by all the Parties to it, so that any rule that construes ambiguities against the drafter will have no force or effect.

**7.11 Headings and Formatting of Definitions.** The various headings used in this Settlement Agreement are solely for the Parties' convenience and may not be used to interpret this Settlement Agreement. Similarly, bolding and italicizing of definitional words and phrases is solely for the Parties' convenience and may not be used to interpret this Settlement Agreement. The headings and the formatting of the text in the definitions do not define, limit, extend, or describe the Parties' intent or the scope of this Settlement Agreement.

**7.12 Exhibits.** The exhibits to this Settlement Agreement are integral parts of the Settlement Agreement and the Settlement and are incorporated into this Settlement Agreement as though fully set forth in the Settlement Agreement.

**7.13 Modifications and Amendments.** No amendment, change, or modification to this Settlement Agreement will be valid unless in writing signed by the Parties or their counsel.

**7.14 Governing Law.** This Settlement Agreement is governed by California law and must be interpreted under California law without regard to conflict-of-laws principles.

**7.15 Further Assurances.** The Parties must execute and deliver any additional papers, documents, and other assurances, and must do any other acts reasonably necessary, to perform their obligations under this Settlement Agreement and to carry out this Settlement Agreement's expressed intent.

**7.16 Agreement Constitutes a Complete Defense.** To the extent permitted by law, this Settlement Agreement may be pled as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit, or other proceedings that may be instituted, prosecuted, or attempted in breach of or contrary to this Settlement Agreement.

**7.17 Execution Date.** The execution date shall be the last date when all signatories have signed the Agreement.

**7.18 Counterparts.** This Settlement Agreement may be executed in counterparts, each of which constitutes an original, but all of which together constitute one and the same instrument. Several signature pages may be collected and annexed to one or more documents to form a complete counterpart. Photocopies, facsimiles, and PDFs of executed copies of this Settlement Agreement may be treated as originals.

**7.19 Recitals.** The Recitals are incorporated by this reference and are part of the Settlement Agreement.

**7.20 Severability.** If any provision of this Settlement is declared by the Court to be invalid, void, or unenforceable, the remaining provisions of this Settlement will continue in full force and effect, unless the provision declared to be invalid, void, or unenforceable is material, at which point the Parties shall attempt to renegotiate the Settlement or, if that proves unavailing, either Party may terminate the Settlement Agreement, and such termination shall be deemed to cause no prejudice to any Party.

**7.21 Inadmissibility.** This Settlement Agreement and any evidence of proceedings or discussions related to this Settlement Agreement are inadmissible as evidence of any liability or wrongdoing whatsoever in any Court or tribunal in any state, territory, or jurisdiction. Further, neither this Settlement Agreement, nor the Settlement contemplated by it, nor any proceedings taken under it, will be construed or offered or received into evidence as an admission, concession, or presumption that class certification is appropriate, except to the extent necessary to consummate this Settlement Agreement and the binding effect of the Final Order and Judgment.

**7.22 No Waiver of Attorney-Client Privilege.** Nothing in this Agreement, the negotiations, and the mediation relating thereto is intended to or shall be deemed to constitute a waiver of any applicable privilege or immunity, including without limitation the attorney-client privilege or work product immunity, by any Party.

*[Continued on the next page]*

**7.23 No Conflict Intended.** Any inconsistency between this Settlement Agreement and the attached exhibits will be resolved in favor of this Settlement Agreement.

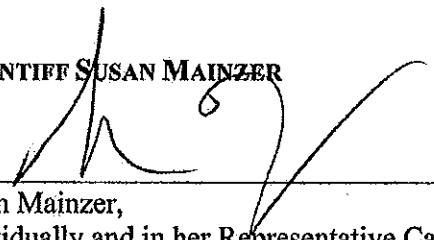
**7.24 List of Exhibits:** The following exhibits are attached to this Settlement Agreement:

- Exhibit 1: [Proposed] Preliminary Approval of Class Settlement and Provisional Class Certification Order
- Exhibit 2: Long Form Notice
- Exhibit 3: Email Notice
- Exhibit 4: Publication Notice
- Exhibit 5: Claim Form
- Exhibit 6: Opt-Out Form
- Exhibit 7: [Proposed] Final Order Approving Class Action Settlement and Judgment
- Exhibit 8: Sponsored Story Examples

**The Parties have agreed to the terms of this Settlement Agreement and have signed below.**

Dated: 10/31/12

**PLAINTIFF SUSAN MAINZER**

A handwritten signature in black ink, appearing to read 'Susan Mainzer', is written over a horizontal line. The signature is stylized and extends above and below the line.

Susan Mainzer,  
Individually and in her Representative Capacity



Dated: \_\_\_\_\_

10/4/12

**PLAINTIFF JAMES H. DUVAL**

James H. Duval,  
Individually and in his Representative Capacity

Dated: 10/3/12

**PLAINTIFF W.T.**

*W.T.*

W.T.,  
Individually and in his Representative Capacity

Dated: 10/3/12

**PLAINTIFF W.T., A MINOR, BY AND THROUGH RUSSELL  
TAIT AS GUARDIAN AD LITEM**

*Russell Tait*

Russell Tait,  
on behalf of W.T., Individually and in his Representative  
Capacity

Dated: 10-05-12

DEFENDANT FACEBOOK, INC.

Michael G. Rhodes

By: Michael G. Rhodes

Title: Partner, Cooley LLP

On behalf of Facebook, Inc.

Counsel + Attorney-in-Fact  
For Facebook

MR

## **EXHIBIT 1**

**[PROPOSED] PRELIMINARY APPROVAL OF CLASS SETTLEMENT  
AND PROVISIONAL CLASS CERTIFICATION ORDER**

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO 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,

Defendant.

Case No. CV-11-01726 RS

**[PROPOSED] PRELIMINARY APPROVAL  
OF CLASS SETTLEMENT AND  
PROVISIONAL CLASS CERTIFICATION  
ORDER**

**JUDGE:** Hon. Richard G. Seeborg  
**COURTROOM:** 3

1 On October 25, 2012, this Court heard the joint motion of plaintiffs Susan Mainzer, James  
2 H. Duval, and W.T., a minor, by and through Russell Tait as Guardian ad Litem (“Plaintiffs”) and  
3 Facebook, Inc. (“Facebook”) for preliminary approval of a class action settlement and provisional  
4 class certification under Rule 23 of the Federal Rules of Civil Procedure. This Court has  
5 reviewed the motion, the memoranda of law and declarations filed in support thereof, the  
6 Amended Settlement Agreement and Release (“Settlement Agreement”), and the exhibits to the  
7 Settlement Agreement, and considered the arguments of counsel. The Court has also reviewed  
8 Plaintiffs’ Motion for Provisional Class Certification and Appointment of Class Representatives  
9 and Class Counsel and the memorandum of law and declarations in support thereof.

10 Based on this review and the findings below, the Court found good cause to grant the  
11 motions.

12 **FINDINGS:**

13 1. The Settlement Agreement appears to be the product of serious, informed, non-  
14 collusive negotiations and falls within the range of possible approval as fair, reasonable and  
15 adequate. *See In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007)  
16 (granting preliminary approval where the settlement “appears to be the product of serious,  
17 informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant  
18 preferential treatment to class representatives or segments of the class, and falls within the range  
19 of possible approval”).

20 2. It is appropriate to provisionally certify the Class and Minor Subclass (defined  
21 below), for settlement purposes only, pursuant to Federal Rule of Civil Procedure 23(b)(3):

22 (a) In the context of the Settlement Agreement, the Class and Minor Subclass  
23 are so numerous that joinder of all Class and Minor Subclass Members is impracticable. Fed. R.  
24 Civ. P. 23(a)(1).

25 (b) In the context of the Settlement Agreement, there are questions of law and  
26 fact common to the Class and Minor Subclass. Fed. R. Civ. P. 23(a)(2).

27 (c) In the context of the Settlement Agreement, Plaintiffs’ claims are typical of  
28 the Class’s and Minor Subclass’s claims. Fed. R. Civ. P. 23(a)(3).

1           (d) In the context of the Settlement Agreement, Plaintiffs and Class Counsel  
2 can adequately represent the Class and Minor Subclass. Fed. R. Civ. P. 23(a)(4).

3           (e) In the context of the Settlement Agreement, there are questions of law and  
4 fact which predominate over any questions affecting only individual Class and Minor Subclass  
5 Members. Fed. R. Civ. P. 23(b)(3).

6           (f) In the context of the Settlement Agreement, class certification is superior to  
7 other available methods for the fair and efficient adjudication of the controversy. Fed. R. Civ. P.  
8 23(b)(3).

9           3. The Court finds that the method of providing notice to the Class and Minor  
10 Subclass Members proposed in the Settlement Agreement constitutes the best method for  
11 providing such notice that is practicable under the circumstances and constitutes valid, due, and  
12 sufficient notice to all Class and Minor Subclass Members of their rights and obligations,  
13 complying fully with the requirements of Rule 23 of the Federal Rules of Civil Procedure, due  
14 process, and any other applicable law. The Long Form Notice, Email Notice, and Publication  
15 Notice (attached to the Settlement Agreement) comply with due process and Rule 23 because the  
16 notices are reasonably calculated to adequately apprise Class and Minor Subclass Members of (i)  
17 the pending lawsuit, (ii) the proposed settlement, and (iii) their rights, including the right to either  
18 participate in the settlement, exclude themselves from the settlement or object to the settlement.  
19 The Court also approves and authorizes the Parties' use of the Claim Form and Opt-Out Form  
20 that were attached to the Settlement Agreement.

21           4. Facebook filed a copy of the notice it gave on [Month] [Date], [Year] pursuant to  
22 28 U.S.C. § 1715(b) and the notice complies with the requirements of 28 U.S.C. § 1715(b).

23           **IT IS ORDERED THAT:**

24           1. **Provisional Certification.** The Class is provisionally certified, for settlement  
25 purposes only, under Federal Rule of Civil Procedure 23(b)(3) as:

26           a. **Class:** All persons in the United States who have or have had a Facebook  
27 account at any time and had their names, nicknames, pseudonyms, profile pictures, photographs,  
28



1 likenesses, or identities displayed in a Sponsored Story, at any time on or before the date of entry  
2 of the Preliminary Approval Order.

3           **b. Minor Subclass:** All persons in the Class who additionally have or have  
4 had a Facebook account at any time and had their names, nicknames, pseudonyms, profile  
5 pictures, photographs, likenesses, or identities displayed in a Sponsored Story, while under  
6 eighteen (18) years of age, or under any other applicable age of majority, at any time on or before  
7 the date of entry of the Preliminary Approval Order.

8           **2. Appointment of Class Representative and Class Counsel for Settlement**  
9 **Purposes Only.** Plaintiffs Susan Mainzer, James H. Duval, and W.T., a minor, by and through  
10 Russell Tait as Guardian ad Litem, are conditionally certified as the Class Representatives to  
11 implement the Parties' settlement in accordance with the Settlement Agreement. The Arns Law  
12 Firm, through Robert S. Arns, Esq., Jonathan E. Davis, and Steven R. Weinmann, and Jonathan  
13 Jaffe Law, through Jonathan Jaffe, Esq., are conditionally appointed as Class Counsel to  
14 implement the Parties' settlement in accordance with the Settlement Agreement. Plaintiffs and  
15 Class Counsel must fairly and adequately protect the Class's and Minor Subclass's interests.

16           **3. Settlement Approval.** The Settlement Agreement, including the Long Form  
17 Notice, Email Notice, Publication Notice, Claim Form and Opt-Out Form attached to the  
18 Settlement Agreement as Exhibits 2-6, are preliminarily approved.

19           **4. Provision of Class Notice.** The Class and Minor Subclass Members will be  
20 provided notice of the settlement in the manner specified under Section 3.3 of the Settlement  
21 Agreement.

22           **5. Claim for Class Relief.** Class Members who want to be eligible to receive a share  
23 of the Net Settlement Fund must accurately complete and submit a Claim Form to the Settlement  
24 Administrator, per the methods prescribed in the Long Form Notice no later than one-hundred-  
25 and-fifty (150) calendar days from the date of this Order (which is sixty (60) calendar days after  
26 the deadline for completing the transmission of the Email Notice under Section 3.3(b) of the  
27 Settlement Agreement) (the "Objection, Opt-Out and Claim Deadline").  
28

1           **6.     Objection to Settlement.**

2           **a.**     Class and Minor Subclass Members who have not submitted a timely  
3 written exclusion request pursuant to paragraph 7 below of this Order, and who want to object to  
4 the Settlement Agreement must deliver written objections pursuant to the instructions below in  
5 subparagraph 6(c) no later than the Objection, Opt-Out and Claim Deadline. Written objections  
6 must be verified by a declaration under the penalty of perjury or a sworn affidavit and must  
7 include: (a) the name of the Action and case number, “*Fraley v. Facebook, Inc.*, Case No. CV-11-  
8 01726 RS”; (b) the full name, address, telephone number, and email address associated with the  
9 Facebook account of the person objecting; and (c) an explanation detailing the specific reasons  
10 for each objection, including any legal and factual support the objector wishes to bring to the  
11 Court’s attention and any evidence the objector wishes to introduce in support of the objection(s).

12           **b.**     Any Class or Minor Subclass Member who submits a timely written  
13 objection (as described in this paragraph 6), may appear at the Fairness Hearing, either in person  
14 or through personal counsel hired at the Class Member’s expense, to object to the Settlement  
15 Agreement. Class and Minor Subclass Members, or their attorneys, intending to make an  
16 appearance at the Fairness Hearing, however, must also deliver to Class Counsel, Facebook’s  
17 Counsel, and the Court, no later than the Objection, Opt-Out and Claim Deadline, a Notice of  
18 Intention to Appear. As an alternative to the Notice of Intention to Appear, Class and Minor  
19 Subclass Members may also state their intention to appear at the Fairness Hearing directly within  
20 their objections. Only Class and Minor Subclass Members who have submitted a timely  
21 objection and provided notice of their intention to speak at the Fairness Hearing may speak at the  
22 Fairness Hearing. However, it is not necessary for an objector to appear at the Fairness Hearing.

23           **c.**     The foregoing papers shall be submitted through one of the following  
24 means: (1) Objecting Class Members may submit written objections to the Settlement  
25 Administrator by postal mail or electronic mail<sup>1</sup> or (2) if the objector is represented by counsel

26 \_\_\_\_\_  
27 <sup>1</sup> Every Friday starting the date Email Notice begins to be provided under Section 3.3(b), the  
28 Settlement Administrator will email to Facebook’s Counsel and Class Counsel any objections it  
received during the prior week. After the Objection, Opt-Out and Claim Deadline, the Settlement  
Administrator will compile all objections it received, with an index, which Plaintiffs will file with

1 who is registered for e-filing before this Court, the objection may be filed with the Court and  
2 served on Facebook and Plaintiffs through the Court's electronic case filing ("ECF") system  
3 located at <https://ecf.cand.uscourts.gov/cand/index.html>. An objection filed with the Court via  
4 ECF may redact the objecting individual's telephone number or email address, so long as the  
5 unredacted version is served on Class and Facebook Counsel.

6 **d.** The delivery and filing date is deemed to be the date the objection is  
7 (a) deposited in the U.S. Mail or equivalent foreign system, with postage paid by the objector, as  
8 evidenced by the postmark [if mailed to the Settlement Administrator], (b) emailed to the  
9 Settlement Administrator, as reflected on the transmission record [if emailed], or (c) filed with the  
10 Court, as reflected on the objection's "notice of electronic filing" [if filed electronically via the  
11 Court's ECF system]. For the purposes of email and ECF filing, transmission must be complete  
12 by 11:59 p.m. (Pacific) on the Objection, Opt-Out and Claim Deadline.

13 **e.** Any Class and Minor Subclass Members who fail to object to the  
14 Settlement Agreement in the manner specified above will: (1) be deemed to have waived their  
15 right to object, and will be forever barred from making any objections, to the Settlement  
16 Agreement; (2) be foreclosed from objecting (whether by a subsequent objection, intervention,  
17 appeal, or any other process) to the Settlement Agreement; and (3) not be entitled to speak at the  
18 Fairness Hearing.

19 **7. Requesting Exclusion.** Class and Minor Subclass Members who want to be  
20 excluded from the settlement must timely submit a complete Opt-Out Form. If sent by mail, the  
21 Opt-Out Form must be postmarked no later than the Objection, Opt-Out and Claim Deadline,  
22 with postage paid by the person requesting exclusion. If submitted electronically, the Opt-Out  
23 Form must be submitted by 11:59 p.m. (Pacific), on or before the Objection, Opt-Out and Claim  
24 Deadline. So-called "mass" or "class" opt-outs purporting to be made on behalf of multiple  
25 persons or classes of persons shall not be allowed and deemed invalid. Class and Minor Subclass

26  
27 the Court prior to the filing deadline for Plaintiffs' brief in support of the Final Order and  
28 Judgment. Plaintiffs shall redact Class Members' telephone numbers and email addresses when  
filing the objections.

1 Members who do not exclude themselves from the Settlement shall be bound by all subsequent  
2 proceedings, orders, and judgments in this Action, whether favorable or unfavorable, including  
3 the release provided for under the Settlement Agreement.

4 **8. Termination.** If the Settlement Agreement terminates for any reason, this Action  
5 will revert to its previous status in all respects as it existed before the Parties executed the  
6 Settlement Agreement. This Court's provisional certification of the Class and Minor Subclass  
7 and findings underlying the provisional certification shall be solely for settlement purposes. This  
8 Order will not waive or otherwise impact the Parties' rights or arguments. The Court expressly  
9 adopts and incorporates by reference Section 6.1 of the Settlement Agreement.

10 **9. No Admissions.** Nothing in this Order is, or may be construed as, an admission or  
11 concession on any point of fact or law by or against any Party. Additionally, in the event the  
12 Settlement Agreement terminates for any reason, no Party or other person may use the Settlement  
13 Agreement, any proceedings or discussions related to the Settlement Agreement, or any orders  
14 related to the Settlement Agreement in any manner prohibited by Sections 6.1 and 7.21 of the  
15 Settlement Agreement.

16 **10. Stay of Dates and Deadlines.** All discovery and pretrial proceeding deadlines,  
17 are hereby vacated and suspended until further notice from the Court, except for such actions as  
18 are necessary to implement the Settlement Agreement and this Order.

19 **11. CAFA Notice.** The Court finds that Facebook has complied with 28 U.S.C.  
20 § 1715(b).

21 **12. Settlement Administrator:** The Court hereby appoints the Garden City Group as  
22 Settlement Administrator and Escrow Agent.

23 **13. Fairness Hearing.** On \_\_\_\_\_ 2013, (no earlier than 195 days after the  
24 entry of this Order), at \_\_\_\_\_, this Court will hold a Fairness Hearing to determine whether  
25 the Settlement Agreement should be finally approved as fair, reasonable, and adequate. All  
26 papers supporting Plaintiffs' request for attorneys' fees and costs must be filed within twenty-  
27 three (23) calendar days of entry of this Order. All of Plaintiffs' other papers supporting Final  
28 Approval of the Settlement Agreement must be filed no later than fourteen (14) calendar days

1 before the Fairness Hearing. Facebook's (optional) statement in support of the Final Approval of  
2 the Settlement Agreement must be filed no later than seven (7) calendar days before the Fairness  
3 Hearing.

4  
5 **IT IS SO ORDERED.**

6  
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8 DATED: \_\_\_\_\_

\_\_\_\_\_  
9 Hon. Richard G. Seeborg  
United States District Court Judge

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**EXHIBIT 2**

**LONG FORM NOTICE**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

ANGEL FRALEY, *et al.*,  
Plaintiffs,

v.  
FACEBOOK, INC., *et al.*,  
Defendants.

Case No. CV-11-01726 RS

**NOTICE OF CLASS ACTION AND PROPOSED SETTLEMENT**

**This Notice relates to a proposed settlement (the “Settlement”) of a class action lawsuit (the “Action”) filed against Facebook, Inc. (“Facebook”) relating to a particular Facebook feature called “Sponsored Stories.” If you or your child have or have had a Facebook account and a Facebook Sponsored Story featured your or your child’s name or profile picture, you or your child may be a “Class Member” in the Action.**

**This Notice explains important legal rights you may have. Your and/or your child’s legal rights will be affected regardless of whether you do or do not act.**

- Sponsored Stories are a form of advertising that typically contains posts which appeared on facebook.com about or from a Facebook user or entity that a business, organization, or individual has paid to promote so there is a better chance that the posts will be seen by the user or entity’s chosen audience. Sponsored Stories may be displayed, for example, when a Facebook user interacts with the Facebook service (including sub-domains, international versions, widgets, plug-ins, platform applications or games, and mobile applications) in certain ways, such as by clicking on the Facebook “Like” button on a business’s, organization’s, or individual’s Facebook page. Sponsored Stories typically include a display of a Facebook user’s Facebook name (i.e., the name the user has associated with his or her Facebook account) and/or profile picture (if the user has uploaded one) with a statement describing the user’s interaction with the Facebook service, such as “John Smith likes UNICEF,” “John Smith played Farmville,” or “John Smith shared a link.” For illustrative purposes only, and without limiting Sponsored Stories to those examples, Exhibit A at the end of this notice [Exhibit 8 to the Settlement] contains several examples of Sponsored Stories.
- The Action claimed that Facebook unlawfully used Class Members’ names, profile pictures, photographs, likenesses, and identities to advertise or sell products and services through Sponsored Stories, without obtaining Class Members’ consent. Facebook denies any wrongdoing and any liability whatsoever. No court or other entity has made any judgment or other determination of any liability.
- As described more completely below, in the Settlement, Facebook has agreed to:
  1. Pay \$20 million into a fund that can be used, in part, to pay claims of Class Members (including Minor Subclass Members) who appeared in a Sponsored Story. Each participating Class Member may be eligible to receive up to \$10. *The amount, if any,*



*paid to each claimant depends upon the number of claims made. No one knows in advance how much each claimant will receive, or whether any money will be paid directly to claimants. If the number of claims made renders it economically infeasible to pay money to persons who make a timely and valid claim, payment will be made to the not-for-profit organizations identified in Section 7 of this notice. These organizations are involved in educational outreach that teaches adults and children how to use social media technologies safely, or are involved in research of social media, with a focus on critical thinking around advertising and commercialization, and particularly with protecting the interests of children.*

2. Revise its terms of service (known as the “Statement of Rights and Responsibilities”) relating to Sponsored Stories.
3. Give users (and minor users’ parents or legal guardians) additional information about and control over the use of their (and their children’s) names and profile pictures in Sponsored Stories.

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT</b>		
<b>SUBMIT A CLAIM FORM</b>	This is the only way to be eligible to receive a payment, if the Court orders payment to Class Members.	Deadline: [Month] [Day], [Year]
<b>EXCLUDE YOURSELF</b>	This is the only option that allows you to retain the ability to file your own lawsuit about the legal claims in this case.	Deadline: [Month] [Day], [Year]
<b>OBJECT</b>	Write to the Court about why you object to (i.e., don’t like) the Settlement and think it shouldn’t be approved.	Deadline: [Month] [Day], [Year]
<b>GO TO THE “FAIRNESS HEARING”</b>	<p>The Court will hold a “Fairness Hearing” to consider the Settlement, the request for attorneys’ fees and expenses of the lawyers who brought the Action (“Class Counsel”), and the class representatives’ request for service awards for bringing the Action.</p> <p>You may, but are not required to, speak at the Fairness Hearing about any Objection you filed. If you intend to speak at the Fairness Hearing, you must follow the procedures set forth in Section 15 below when you serve your Objection.</p>	Hearing Date: [Month] [Day], [Year] at [Time]
<b>DO NOTHING</b>	You will not receive a payment, even if the Court orders payment to Class Members. You will also be giving up your right to bring your own lawsuit related to the claims in the Action. You may be eligible to receive the non-monetary benefits of the Settlement, if the Settlement is finally approved.	No deadline

- These rights and options—**and the deadlines to exercise them**—are explained in more detail below.
- The Court in charge of this Action has preliminarily approved the Settlement and must decide whether to give final approval to the Settlement. The relief provided to Class Members will be provided only if the Court gives final approval to the Settlement and, if there are any appeals, after the appeals are resolved in favor of the Settlement. ***Please be patient.***

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## BACKGROUND INFORMATION

### 1. Why did I get this notice?

You received this Notice because a settlement has been reached in this Action regarding Sponsored Stories on Facebook. According to Facebook’s available records, you and/or your child may be a member of the Settlement Class and may be entitled to the relief detailed below.

This Notice explains the nature of the Action, the general terms of the proposed Settlement, and your legal rights and obligations. To obtain more information about the Settlement, including information about how you can see a copy of the Settlement Agreement (which defines certain capitalized terms used in this Notice), see Section 20 below.

### 2. Why is this a class action?

In a class action lawsuit, one or more people called class representatives or “Representative Plaintiffs” (in this Action, Susan Mainzer, James Duval, and W.T., a minor, by and through Russell Tait) sue on behalf of other people who have similar claims (“Class Members”). For purposes of this proposed Settlement, one court will resolve the issues for all Class Members, except for those people who properly exclude themselves from the Settlement Class, as explained in Section 14 below. The company sued in this case, Facebook, is called the Defendant.

### 3. What is this lawsuit about?

Representative Plaintiffs contend that Sponsored Stories were advertisements that used Facebook members’ names and likenesses to sell products without their consent. California Civil Code section 3344 provides that one whose name and/or likeness has been misappropriated is entitled to damages caused by the misappropriation or statutory damages, and that punitive damages may be awarded to the injured party. It also states that the prevailing party (whether it be the person bringing the lawsuit or the defendant, in this case, Facebook) will be entitled to collect attorneys’ fees and costs from the other party. Representative Plaintiffs also allege that Facebook violated California’s Unfair Competition Law (Business and Professions Code, section 17200 and the sections that follow).

**Facebook denies any wrongdoing and any liability whatsoever and the issuance of this Notice is**

**not an expression of the Court’s opinion on the merit or the lack of merit of any of the Representative Plaintiffs’ claims in the Action.**

For information about how to learn about what has happened in the Action to date, please see Section 20 below.

**4. Why is there a Settlement?**

The Court has **not** decided that Representative Plaintiffs or Facebook should win this Action. Instead, both sides agreed to a Settlement. That way, they avoid the cost of a trial, and the Class Members will receive relief when the Settlement is final, rather than years from now, if at all.

**5. How do I know if I am part of the Settlement?**

The Court has decided that everyone who fits this description is a Class Member for purposes of the proposed Settlement:

All persons in the United States who have or have had a Facebook account at any time and had their names, nicknames, pseudonyms, profile pictures, photographs, likenesses, or identities displayed in a Sponsored Story at any time on or before the date of entry of the Preliminary Approval Order.

In this notice, Class Members and Minor Subclass Members (defined below in Section 6) will be collectively referred to as “Class Members.”

**6. I am a minor or a parent or guardian of a minor. How do I know if I am (or my child is) a Minor Subclass Member?**

The Court has decided that everyone who fits this description is a Minor Subclass Member for the purposes of the proposed Settlement:

All persons in the Class who additionally have or have had a Facebook account at any time and had their names, nicknames, pseudonyms, profile pictures, photographs, likenesses, or identities displayed in a Sponsored Story, while under eighteen (18) years of age, or under any other applicable age of majority, at any time on or before the date of entry of the Preliminary Approval Order.

In this Notice, Minor Subclass Members and Class Members (defined above in Section 5) will be collectively referred to as “Class Members.”

**THE PROPOSED SETTLEMENT**

**7. What relief does the Settlement provide to the Class Members?**

If the proposed Settlement is approved by the Court, and after any appeals are resolved, Facebook has agreed to:

- Pay \$20 million into a fund that can be used, in part, to pay claims of Class Members (including Minor Class Members) who appeared in a Sponsored Story. Each participating

Class Member who submits a valid and timely claim form (Authorized Claimant) may be eligible to receive up to \$10. *The amount, if any, paid to each Authorized Claimant depends upon the number of claims made, the costs of administering the settlement and providing notice to the class, the amount of attorneys' fees and costs awarded by the Court, and other factors detailed in the Settlement Agreement. No one knows in advance how much each Authorized Claimant's payment will be, and claimants may be paid nothing at all.*

- In addition to paying claims made by Authorized Claimants or making a payment to the not-for-profit organizations noted below, the \$20 million fund will be used to pay any attorneys' fees and costs awarded by the Court to Class Counsel (defined below), any service (incentive) award paid to the Representative Plaintiffs, and any costs incurred by the Settlement Administrator (who is the neutral third party operating this website and processing claims) and Escrow Agent (who is a the neutral third party administering the fund). The part of the fund that will be used to pay claims made by Authorized Claimants or to pay the not-for-profit organizations noted below is called the Net Settlement Fund.
- If \$10 cannot be paid to each Authorized Claimant, the amount paid to each Authorized Claimant will be reduced pro rata. What this means is that the cash award to individual Authorized Claimants will be determined by subtracting from the \$20 million fund any attorneys' fees and costs awarded by the Court to Class Counsel, any service award paid to the Representative Plaintiffs, and any costs incurred by the Settlement Administrator Escrow Agent, and then dividing the remaining funds by the number of Authorized Claimants. For instance, if the Net Settlement Fund has \$12 million, and there are 1.2 million Authorized Claimants, the payment to each Authorized Claimant will be \$10, subject to the Court's approval. As another example, if the Net Settlement Fund has \$12 million, and there are 2.4 million Authorized Claimants, the payment will be \$5, subject to the Court's approval.
- If the amount to be paid to each Authorized Claimant is calculated to be \$4.99 or less, the Court may, in its discretion, order that the entire Net Settlement Fund be distributed to the not-for-profit organizations identified below instead of to Authorized Claimants.
- If the number of claims made renders it economically infeasible to pay any money to Authorized Claimants, the Court shall order that the entire Net Settlement Fund be distributed to the not-for-profit organizations identified below, instead of to Authorized Claimants.
- If paying \$10 to each Authorized Claimant does not exhaust the Net Settlement Fund, the Court may, in its discretion, either order that each Authorized Claimant receive a pro rata share of the remaining funds or order that the remaining funds be distributed to the not-for-profit organizations identified below.
- *Again, no one knows in advance how much, if anything, Authorized Claimants may receive, and no one will know until the deadline for submitting claims passes.*
- The not-for-profit entities that might receive payment under the Settlement are involved in educational outreach that teaches adults and children how to use social media technologies safely, or are involved in research of social media, with a focus on critical thinking around advertising and commercialization, and particularly with protecting the interests of children. They are: Center for Democracy and Technology, Electronic Frontier Foundation, MacArthur Foundation, Joan Ganz Cooney Center, Berkman Center for Internet and Society

(Harvard Law School), Information Law Institute (NYU Law School), Berkeley Center for Law and Technology (Berkeley Law School), Center for Internet and Society (Stanford Law School), High Tech Law Institute (Santa Clara University School of Law), Campaign for Commercial-Free Childhood, Consumers Federation of America, Consumer Privacy Rights Fund, ConnectSafely.org, and WiredSafety.org.

In addition to the monetary benefits, the Settlement will require Facebook to:

- Revise its terms of service (known as the “Statement of Rights and Responsibilities”) to more fully explain the instances in which Class Members agree to the display of their names and profile pictures in connection with Sponsored Stories.
- Create a mechanism that will allow Class Members to view, on a going-forward basis, the subset of their interactions and other content on Facebook that have been displayed in Sponsored Stories (if any).
- Develop settings that will allow Class Members to prevent particular items or categories of content or information related to them from being displayed in future Sponsored Stories.
- Revise its terms of service to confirm that minor Class Members represent that their parent or legal guardian consents to the use of their names and profile pictures in connection with commercial, sponsored, or related content.
- Provide parents and legal guardians of minor Class Members with additional information about how advertising works on Facebook in its Family Safety Center (currently available at <https://www.facebook.com/help/contact/328678960533614>) and provide parents and legal guardians of minor Class Members with additional tools to control whether their children’s names and profile pictures are displayed in connection with Sponsored Stories.
- Encourage new users, upon or soon after joining Facebook, to include their family in their profile information, including their parents and children. Where both a parent and a minor child are users and confirm their relationship, Facebook will provide parents of minor Class Members with certain additional educational information and tools to control whether their children’s names and profile pictures are displayed in connection with Sponsored Stories.
- Add a control in minor Class Members’ timelines that enables each minor Class Member to indicate that his or her parents are not Facebook users. Where a minor Class Member indicates that his or her parents are not on Facebook, Facebook will make the minor ineligible to appear in Sponsored Stories until he or she reaches the age of 18, until the minor changes his or her setting to indicate that his or her parents are on Facebook, or until a confirmed parental relationship with the minor user is established.
- Make a good faith effort to work with Class Counsel to identify and clarify educational or other information on the Facebook website about how advertising works on Facebook.

**8. Will the Representative Plaintiffs receive any compensation for their efforts in bringing this Action?**

Susan Mainzer, James Duval, and W.T., a minor, by and through Russell Tait, will request a service award of up to \$12,500 (each) for their services as class representatives and their efforts in bringing the Action. The Court will make the final decision as to the amount to be paid to the

Representative Plaintiffs.

**HOW TO REQUEST PAYMENT – SUBMITTING A CLAIM FORM**

**9. How can I (or my child who is a Minor Subclass Member) get a payment?**

To qualify for payment, Class Members must send in a Claim Form. A Claim Form is accessible by clicking [HERE](#). Read the instructions on the Claim Form carefully, fill out all the information requested, and submit it electronically by 11:59 p.m. Pacific on [Month] [Day], [Year].

Alternatively, a copy of the Claim Form can be obtained from the Settlement website [www.\[xxx\].com](http://www.[xxx].com) or from the Settlement Administrator at the address below and submitted by postal mail. If a completed Claim Form is submitted by mail it must be submitted to the below address and postmarked by [Month] [Day], [Year].

*Fraley v. Facebook, Inc., Settlement*  
c/o GCG  
[Address]  
[City], [State] [ZIP Code]

**10. When will I (or my child) get a payment if I submit a Claim Form?**

If a Class Member submits a valid Claim Form by [Month] [Day], [Year], and the Court orders payment to Authorized Claimants, the Authorized Claimant will receive his or her payment about 70 days after the Court grants final approval of the Settlement, assuming that no one files an appeal challenging the Settlement. The Claim Form allows Class Members to choose between payment via Automated Clearing House (ACH) transfer and payment via physical check.

**THE LAWYERS REPRESENTING YOU**

**11. Do I have a lawyer in this case?**

The Court has ordered that the Arns Law Firm and Jonathan Jaffe Law (“Class Counsel”) will represent the interests of all Class Members. Class Members will not be separately charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

**12. How will the lawyers be paid?**

Class Counsel are requesting up to \$[\_\_\_] million for their attorneys’ fees and up to \$[\_\_\_] to cover their costs. The Court will make the final decision as to the amounts to be paid to the Class Counsel.

**DISMISSAL OF ACTION AND RELEASE OF ALL CLAIMS**

**13. What do Class Members give up to obtain relief under the Settlement?**

If the Settlement is approved, the Court will enter a Final Order and Judgment dismissing the



Action “with prejudice” (i.e., meaning that it cannot be filed again).

Upon the entry of the Final Order and Judgment, Plaintiffs and all Class Members, including all Minor Subclass Members (and their parents or legal guardians on all Minor Subclass Members’ behalf), who do not validly and timely request to be excluded from the proposed Settlement, and each of their respective successors, assigns, legatees, heirs, and personal representatives (collectively the “Releasing Parties”) shall be deemed to have fully, finally, and forever released, relinquished, and discharged against Facebook and all other persons and entities, including but not limited to persons and entities that have purchased Sponsored Stories from Facebook, and each of their direct or indirect parents, wholly or majority-owned subsidiaries, affiliated and related entities, predecessors, successors and assigns, partners, privities, and any of their present and former directors, officers, employees, shareholders, agents, representatives, attorneys, accountants, insurers, and all persons acting by, through, under, or in concert with them, or any of them (collectively the “Released Parties”), all manner of action, causes of action, claims, demands, rights, suits, obligations, debts, contracts, agreements, promises, liabilities, damages, charges, penalties, losses, costs, expenses, and attorneys’ fees, of any nature whatsoever, known or unknown claims, in law or equity, fixed or contingent, which the Releasing Parties have or may have against the Released Parties arising out of or relating to any of the acts, omissions, or other conduct that was or could have been alleged in the Action, including but not limited to any and all acts, omissions, or other conduct related to the display of any Class Member’s name, nickname, pseudonym, profile picture, photograph, likeness, or identity in a Sponsored Story (“Released Claims”).

**In addition, the Releasing Parties expressly waive and relinquish, to the fullest extent permitted by law, the provisions, rights, and benefits of Section 1542 of the California Civil Code, or any other similar provision under federal or state law, which provides:**

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

The Releasing Parties fully understand that the facts on which this Settlement Agreement is executed may be different from the facts now believed by the Releasing Parties and their Counsel to be true, and they expressly accept and assume the risk of this possible difference in facts and agree that this Settlement Agreement remains effective despite any difference in facts. Further, the Releasing Parties agree that this waiver is an essential and material term of this release and the Settlement that underlies it and that without such waiver the Settlement would not have been accepted.

The precise definitions of the capitalized terms in the paragraph above can be found in the Settlement Agreement, which is located online at [www.\[xxx\].com](http://www.[xxx].com) or may be obtained by requesting it from the Settlement Administrator: *Fraley v. Facebook, Inc.*, Settlement, c/o The GCG [Address], [City], [State] [ZIP Code], email@settlementname.com.

Unless you exclude yourself, you will remain in the Settlement Class, and that means that you



cannot sue, continue to sue, or be part of any other lawsuit about the Released Claims. It also means that all of the Court's orders will apply to you and legally bind you.

If you exclude yourself from the Settlement Class, you would retain the right to bring a claim against Facebook, but you would not have representation provided for you through this lawsuit, and would be responsible for hiring your own attorney at your own expense.

## HOW TO EXCLUDE YOURSELF FROM THE SETTLEMENT

### 14. How do Class Members exclude themselves from the Settlement?

Class Members who do not want to be a part of the Settlement must complete a form requesting to be excluded. An electronic version is accessible [HERE](#). If submitted electronically, the submission must be complete by [Month] [Day], [Year], 11:59 p.m. (Pacific).

Alternatively, a copy of this form can be obtained from the Settlement website [www.\[xxx\].com](http://www.[xxx].com) or from the Settlement Administrator at the address below and submitted by postal mail. If the form is submitted by mail, it must be submitted to the below address and postmarked by [Month] [Day], [Year].

*Fraleley v. Facebook, Inc., Settlement*  
c/o GCG  
[Address]  
[City], [State] [ZIP Code]

Requests for exclusions must be made on an individual basis using the provided form. "Mass" or "class" opt-outs purporting to be made on behalf of multiple persons or classes of persons shall not be allowed.

If you submit a valid electronic or written request to be excluded from the Class, you will not be a part of the Settlement, you will not be eligible to make a claim for payment (as described in Section 9 above), will not be bound by the Final Order and Judgment entered in the Action, and will not be precluded from bringing any individual claim against Facebook based on the conduct complained of in the Action. If a claimant also submits a request for exclusion from the class and settlement, the request for exclusion will be ignored.

## HOW TO OBJECT TO THE SETTLEMENT

### 15. How do I tell the Court that I do not like the Settlement?

At the date, time, and location stated in Section 18 below, the Court will hold a Fairness Hearing to determine if the Settlement is fair, reasonable, and adequate, and to also consider Class Counsel's request for an award of attorneys' fees and expenses, and a service award to the Representative Plaintiffs.

If you have not submitted a timely exclusion request and wish to object to the Settlement or to the award of attorneys' fees, expenses, or service awards, you must deliver a written objection ("Objection") by [Month] [Day], [Year] that complies with the following requirements.

Written objections must be verified by a declaration under the penalty of perjury or a sworn affidavit and must include: (a) the name of the Action and case number, "*Fraleley v. Facebook*,

*Inc.*, Case No. CV-11-01726 RS”; (b) the full name, address, telephone number, and email address associated with the Facebook account of the person objecting; and (c) an explanation detailing the specific reasons for each objection, including any legal and factual support the objector wishes to bring to the Court’s attention and any evidence the objector wishes to introduce in support of the objection(s). Objections will not be valid if they only object to the lawsuit’s appropriateness or merits.

You may, but need not, file and serve your Objection through counsel of your choice. If you do make your Objection through an attorney, you will be responsible for your personal attorney’s fees and costs.

Objections filed by attorneys registered for e-filing with this Court on behalf of Class Members may be filed through the Court’s electronic court filing (“ECF”) system located at <https://ecf.cand.uscourts.gov/cand/index.html>. An Objection filed with the Court via ECF may redact the objecting individual’s telephone number or email address, so long as the unredacted version is served on both Class and Facebook Counsel at the following addresses: Class Counsel—Robert S. Arns, Esq., The Arns Law Firm, 515 Folsom Street, 3rd Floor, San Francisco, CA 94104; Facebook’s Counsel—Michael G. Rhodes, Esq., Cooley LLP, 101 California Street, 5th Floor, San Francisco, CA 94111. Otherwise, objections must be sent to the Settlement Administrator by mail or email at the following addresses:

*Fraley v. Facebook, Inc., Settlement*  
c/o GCG, Inc.  
[Address]  
[City], [State] [ZIP Code]  
email@settlementname.com

The date of an objection is deemed to be the date on which it is:

- (a) deposited in the U.S. Mail or equivalent foreign system, with postage paid by the objector, as evidenced by the postmark [*if mailed to the Settlement Administrator*];
- (b) transmitted to the Settlement Administrator via email, as reflected on the transmission record [*if emailed to the Settlement Administrator*]; or
- (c) filed with the Court as reflected on the objection’s “notice of electronic filing” [*if filed with the Court electronically and served on the Parties via the Court’s ECF system*].

For the purposes of email and ECF transmission, transmission must be complete by 11:59 p.m. (Pacific) on [Month] [Day], [Year].

**IF YOU DO NOT TIMELY MAKE YOUR OBJECTION, YOU WILL BE DEEMED TO HAVE WAIVED ALL OBJECTIONS AND WILL NOT BE ENTITLED TO SPEAK AT THE FAIRNESS HEARING.**

If you deliver a timely Objection, and comply with this paragraph, you may appear at the Fairness Hearing, either in person or through personal counsel hired at your expense, to object to the fairness, reasonableness, or adequacy of the Settlement, or to the award of attorneys’ fees, expenses, or service award. You are not required, however, to appear.

**If you or your attorney intend to make an appearance at the Fairness Hearing, you must also deliver, according to the above procedures, no later than [Month] [Day], [Year], a Notice of Intention to Appear. Alternatively, you may state in your Objection that you**

**intend to appear and speak at the Fairness Hearing.**

**16. What is the difference between excluding myself and objecting to the Settlement?**

Objecting is simply telling the Court that you don't like something about the Settlement. You can object only if you stay in the Settlement Class. Excluding yourself is telling the Court that you don't want to be part of the Settlement Class. If you exclude yourself, you have no basis to object because the Settlement no longer affects you.

**FAIRNESS HEARING**

**17. What is the Fairness Hearing?**

The Court has preliminarily approved the Settlement and will hold a hearing to decide whether to give final approval to the Settlement. The purpose of the Fairness Hearing will be for the Court to determine whether the Settlement should be approved as fair, reasonable, adequate, and in the best interests of the Class; to consider the award of attorneys' fees and expenses to Class Counsel; and to consider the request for a service award to the Representative Plaintiffs.

**18. When and where is the Fairness Hearing?**

The Court will hold the Fairness Hearing at [time] on [Month] [Day], [Year] in Courtroom 3, 17<sup>th</sup> Floor, 450 Golden Gate Avenue, San Francisco, CA 94102. The hearing may be postponed to a different date or time or location without notice. Please check [www.\[xxx\].com](http://www.[xxx].com) for any updates about the Settlement generally or the Fairness Hearing specifically. If the date or time of the Fairness Hearing changes, an update to the Settlement website will be the only way you will be informed of the change.

**19. May I speak at the hearing?**

At that hearing, the Court will be available to hear any objections and arguments concerning the fairness of the Settlement.

You may attend, but you do not have to. As described above in Section 15, you may speak at the Fairness Hearing only if (a) you have timely served and filed an Objection, and (b) followed the procedures set forth in Section 15 above for notifying the Court and the parties that you intend to speak at the Fairness Hearing.

If you have requested exclusion from the Settlement, however, you may not speak at the Fairness Hearing.

**GETTING MORE INFORMATION & UPDATING INFORMATION**

**20. How do I get more information?**

To see a copy of the Settlement Agreement (which defines capitalized terms used in this notice and provides a brief summary of what has happened in the Action), the Court's preliminary approval order, Class Counsel's application for attorneys' fees and costs, and the operative complaint filed in the Action, please visit the settlement website located at: [www.\[xxx\].com](http://www.[xxx].com).

Alternatively, you may contact the Settlement Administrator at: *Fraley v. Facebook, Inc.*, Settlement, c/o GCG [Address], [City], [State] [ZIP Code].

The above description of the Action is general and does not cover all of the issues and proceedings that have occurred. In order to see the complete file for the Action, you should visit the website of the Administrative Office of the U.S. Courts, PACER Service Center, located at <http://pacer.psc.uscourts.gov/>. You may also visit or call the Clerk's office at the United States District Court for the Northern District of California, San Francisco Courthouse located at 450 Golden Gate Avenue, San Francisco, CA 94102. The Clerk will tell you how to obtain the file for inspection and copying at your own expense.

You may also contact Class Counsel, Robert S. Arns, Esq. of the Arns Law Firm, by calling (800) 495-7800.

**21. What if my address or other information changes after I submit a Claim Form?**

If, after you submit a claim form, you change your postal or email address, it is your responsibility to inform the Settlement Administrator of your updated information. You may do so either by mail or email at the addresses below:

*Fraley v. Facebook, Inc., Settlement*  
c/o GCG  
[Address]  
[City], [State] [ZIP Code]  
[email@settlementname.com]

\*\*\*\*\*

**DO NOT ADDRESS ANY QUESTIONS ABOUT THE SETTLEMENT OR THE LITIGATION TO THE CLERK OF THE COURT OR THE JUDGE.**

Dated: [Month] [Day], [Year]

By: Order of the Northern District of California  
HONORABLE RICHARD G. SEEBORG  
JUDGE OF THE U.S. DISTRICT COURT

**EXHIBIT 3**

**EMAIL NOTICE**

To: XXXXXXXXXXXX

From: XXXXXXXXXXXX

Re: LEGAL NOTICE OF SETTLEMENT OF CLASS ACTION

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NOTICE OF PENDING CLASS ACTION AND NOTICE OF PROPOSED SETTLEMENT  
ANGEL FRALEY V. FACEBOOK, INC.

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**You are receiving this e-mail [or notification] because you may have been featured in a “Sponsored Story” on Facebook prior to [insert: date of entry of Preliminary Approval Order].**

*A federal court authorized this Notice. This is not a solicitation from a lawyer.*

**Why did I get this notice?** This Notice relates to a proposed settlement (“Settlement”) of a class action lawsuit (“Action”) filed against Facebook relating to a particular Facebook feature called “Sponsored Stories.” According to available records, you may be a “Class Member.”

**What is the Action about?** The Action claims that Facebook unlawfully used the names, profile pictures, photographs, likenesses, and identities of Facebook users in the United States to advertise or sell products and services through Sponsored Stories without obtaining those users’ consent. Facebook denies any wrongdoing and any liability whatsoever. No court or other entity has made any judgment or other determination of any liability.

**What is a Sponsored Story?** Sponsored Stories are a form of advertising that typically contains posts which appeared on facebook.com about or from a Facebook user or entity that a business, organization, or individual has paid to promote so there is a better chance that the posts will be seen by the user or entity’s chosen audience. Sponsored Stories may be displayed, for example, when a Facebook user interacts with the Facebook service (including sub-domains, international versions, widgets, plug-ins, platform applications or games, and mobile applications) in certain ways, such as by clicking on the Facebook “Like” button on a business’s, organization’s, or individual’s Facebook page. Sponsored Stories typically include a display of a Facebook user’s Facebook name (i.e., the name the user has associated with his or her Facebook account) and/or profile picture (if the user has uploaded one) with a statement describing the user’s interaction with the Facebook service, such as “John Smith likes UNICEF,” “John Smith played Farmville,” or “John Smith shared a link.”

**What relief does the Settlement provide?** Facebook will pay \$20 million into a fund that can be used, in part, to pay claims of Class Members (including Minor Class Members) who appeared in a Sponsored Story. Each participating Class Member who submits a valid and timely claim form may be eligible to receive up to \$10. *The amount, if any, paid to each claimant depends upon the number of claims made and other factors detailed in the Settlement. No one knows in advance how much each claimant will receive, or whether any money will be paid directly to claimants.* If the number of claims made renders it economically infeasible to pay money to persons who make a timely and valid claim, payment will be made to the not-for-profit organizations identified on the Settlement website at [www.\[xxx\].com](http://www.[xxx].com). These organizations are involved in educational outreach that teaches adults and children how to use social media technologies safely, or are involved in research of social media, with a focus on

critical thinking around advertising and commercialization, and particularly with protecting the interests of children.

In addition to monetary relief, Facebook will (a) revise its terms of service (known as the “Statement of Rights and Responsibilities” or “SRR”) to more fully explain the instances in which users agree to the display of their names and profile pictures in connection with Sponsored Stories; (b) Facebook will create an easily accessible mechanism that enables users to view, on a going-forward basis, the subset of their interactions and other content on Facebook that have been displayed in Sponsored Stories (if any); (c) develop settings that will allow users to prevent particular items or categories of content or information related to them from being displayed in future Sponsored Stories; (d) revise its SRR to confirm that minors represent that their parent or legal guardian consents to the use of the minor’s name and profile picture in connection with commercial, sponsored, or related content; (e) provide parents and legal guardians with additional information about how advertising works on Facebook in its Family Safety Center and provide parents and legal guardians with additional tools to control whether their children’s names and profile pictures are displayed in connection with Sponsored Stories; and (f) add a control in minor users’ profiles that enables each minor user to indicate that his or her parents are not Facebook users and, where a minor user indicates that his or her parents are not on Facebook, Facebook will make the minor ineligible to appear in Sponsored Stories until he or she reaches the age of 18, until the minor changes his or her setting to indicate that his or her parents are on Facebook, or until a confirmed parental relationship with the minor user is established.

### **YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT**

<b>SUBMIT A CLAIM FORM</b>	This is the only way to be eligible to receive a payment, if the Court orders payment to Class Members.	Deadline: [Month] [Day], [Year]
<b>EXCLUDE YOURSELF</b>	This is the only option that allows you to retain the ability to file your own lawsuit about the legal claims in this case.	Deadline: [Month] [Day], [Year]
<b>OBJECT</b>	Write to the Court about why you object to (i.e., don’t like) the Settlement and think it shouldn’t be approved.	Deadline: [Month] [Day], [Year]
<b>GO TO THE “FAIRNESS HEARING”</b>	<p>The Court will hold a “Fairness Hearing” to consider the Settlement, the request for attorneys’ fees and expenses of the lawyers who brought the Action (“Class Counsel”), and the class representatives’ request for service awards for bringing the Action.</p> <p>You may, but are not required to, speak at the Fairness Hearing about any Objection you filed. If you intend to speak at the Fairness Hearing, you must follow the procedures stated on the Settlement website to notify the Court and parties of</p>	Hearing Date: [Month] [Day], [Year] at [Time]

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT		
	your intent when you serve your Objection.	
<b>DO NOTHING</b>	You will not receive a payment, even if the Court orders payment to Class Members. You will also be giving up your right to bring your own lawsuit related to the claims in the Action. You may be eligible to receive the non-monetary benefits of the Settlement, if the Settlement is finally approved.	No deadline

**Your Class Member Number:** XXXXXXXXXXXXX

**To Parents and Guardians of Children on Facebook:** The Settlement also involves the claims of minors featured in Sponsored Stories on Facebook. Please see the Settlement website for more information.

**More information?** For more information about the Settlement and how to take the actions described above, please visit [www.\[xxx\].com](http://www.[xxx].com) or write to the Settlement Administrator at *Fraley v. Facebook, Inc.*, Settlement, c/o GCG, [Address], [City], [State] [ZIP Code], [email@settlementname.com]. You may also contact Class Counsel, Robert S. Arns of the Arns Law Firm, by calling (800) 495-7800.



**EXHIBIT 4**

**PUBLICATION NOTICE**

## **NOTICE OF CLASS ACTION AND PROPOSED SETTLEMENT**

**This Notice relates to a proposed settlement (“Settlement”) of a class action lawsuit (“Action”) filed against Facebook relating to a particular Facebook feature called “Sponsored Stories.” If prior to [date of entry of Preliminary Approval Order] you or your child are or were a Facebook user in the United States and a Facebook Sponsored Story featured your or your child’s name and profile picture, you or your child may be a “Class Member” in the Action.**

**What is the Action about?** The Action claims that Facebook unlawfully used the names, profile pictures, photographs, likenesses, and identities of Facebook users in the United States to advertise or sell products and services through Sponsored Stories without obtaining those users’ consent. Facebook denies any wrongdoing and any liability whatsoever. No court or other entity has made any judgment or other determination of any liability.

**What is a Sponsored Story?** Sponsored Stories are a form of advertising that typically contains posts which appeared on facebook.com about or from a Facebook user or entity that a business, organization, or individual has paid to promote so there is a better chance that the posts will be seen by the user or entity’s chosen audience. Sponsored Stories may be displayed, for example, when a Facebook user interacts with the Facebook service in certain ways, such as by clicking on the Facebook “Like” button on a business’s, organization’s or individual’s Facebook page. Sponsored Stories typically include a display of a Facebook user’s Facebook name (i.e., the name the user has associated with his or her Facebook account) and/or profile picture (if the user has uploaded one) with a statement describing the user’s interaction with the Facebook service, such as “John Smith likes UNICEF,” “John Smith played Farmville,” or “John Smith shared a link.”

**What relief does the Settlement provide?** Facebook will pay \$20 million into a fund that can be used, in part, to pay claims of Class Members (including Minor Class Members) who appeared in a Sponsored Story. Each participating Class Member who submits a valid and timely claim form may be eligible to receive up to \$10. *The amount, if any, paid to each claimant depends upon the number of claims made and other factors detailed in the Settlement. No one knows in advance how much each claimant’s share will be or whether any money will be paid directly to claimants.* If the number of claims made renders it economically infeasible to pay money to claimants, payment will be made to the not-for-profit organizations identified on the Settlement website at [www.\[xxx\].com](http://www.[xxx].com). These organizations are involved in educational outreach that teaches adults and children how to use social media technologies safely, or are involved in research of social media, with a focus on critical thinking around advertising and commercialization, and particularly with protecting the interests of children. In addition to monetary relief, Facebook will revise its terms of service (known as the “Statement of Rights and Responsibilities”) relating to Sponsored Stories and give users (and minor users’ parents or legal guardians) additional information about and control over the use of their (and their children’s) names and profile pictures in Sponsored Stories.

## **YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT**

- **SUBMIT A CLAIM.** This is the only way to be eligible to receive a payment, if the Court orders payment to Class Members. The deadline to submit a claim is [Month] [Day], [Year].
- **EXCLUDE YOURSELF:** This is the only option that allows you to retain the ability to file a lawsuit about the legal claims in this case. The exclusion deadline is [Month] [Day], [Year].
- **OBJECT:** Write to the Court about why you object to (i.e., don't like) the Settlement and think it shouldn't be approved. The objection deadline is [Month] [Day], [Year].
- **GO TO A HEARING:** The Court will hold a "Fairness Hearing" to consider the Settlement, the request for attorneys' fees and expenses of the lawyers who brought the Action ("Class Counsel"), and the Plaintiffs' request for service awards for bringing the Action. You may, but are not required to, speak at the Fairness Hearing about any Objection you filed. If you intend to speak at the Fairness Hearing, you must follow certain procedures stated on the Settlement website to notify the Court and parties of your intent when you serve your Objection.
- **DO NOTHING:** You will not receive a payment, even if the Court orders payment to Class Members. You will also be giving up your right to bring your own lawsuit related to the legal claims in this case. You will be eligible receive the non-monetary benefits of the Settlement, if the Settlement is finally approved.

**To Parents and Guardians of Children on Facebook:** The Settlement also involves the claims of minors featured in Sponsored Stories on Facebook. Please see the Settlement website for more information.

**More information?** For more information about the Settlement and how to take the actions described above, please visit [www.\[xxx\].com](http://www.[xxx].com) or write to the Settlement Administrator at *Fraley v. Facebook, Inc.*, Settlement, c/o GCG, [Address], [City], [State] [ZIP Code], [email@settlementname.com]. You may also contact Class Counsel, Robert S. Arns of the Arns Law Firm, by calling (800) 495-7800.

**EXHIBIT 5**

**CLAIM FORM**

**FRALEY V. FACEBOOK, INC., CLAIM FORM**

United States District Court for the Northern District of California

Case No. 11-cv-01726-RS

Settlement Website: www.[xxx].com

Questions about completing the claim form? Contact [settlementadministrator@website.com]

**CLAIM FORMS MUST BE SUBMITTED NO LATER THAN [MONTH] [DAY], [YEAR] AT 11:59 P.M. (PACIFIC).**

*Persons who submit a claim form may be included as a member of the class described on the website referenced above and may be entitled to a payment of up to \$10. If a claimant also submits a request for exclusion from the class and settlement, the request for exclusion will be ignored.*

**1. CONTACT INFORMATION.** (Please legibly print or type the following information)

Name (first, middle, and last): \_\_\_\_\_

Email Address: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Telephone Number (optional): \_\_\_\_\_

(Your contact information will be used by the administrator of this settlement, the Garden City Group, Inc. (“GCG” or “Settlement Administrator”) to contact you, if necessary, about your claim. Providing your telephone number is optional. By providing contact information, you agree that GCG may contact you about your claim.)

**2. INFORMATION TO MAKE A CLAIM FOR YOURSELF OR YOUR CHILD.** (Please legibly print or type the following information)

Email address associated with the your (or your child’s) Facebook account (if different from above):

\_\_\_\_\_

The name associated with the your (or your child’s) Facebook account (if different from above):

\_\_\_\_\_

User ID or Username<sup>1</sup> for your (or your child’s) Facebook account: \_\_\_\_\_

Class Member Number listed on the notice you (or your child) received: \_\_\_\_\_

(If you did not receive an email notice about this settlement or no longer have access to that document, you may leave blank the item immediately above calling for your Class Member Number.)

**YOUR PERSONAL INFORMATION WILL BE USED ONLY IN CONNECTION WITH THIS SETTLEMENT AGREEMENT AND IN ORDER TO PROCESS YOUR CLAIM. YOUR INFORMATION WILL NOT BE USED FOR ANY OTHER PURPOSE.**

<sup>1</sup> To confirm your (or your child’s) User ID or Username, log into the claimant’s Facebook account and navigate to the profile page by clicking on the claimant’s name. The portion of the URL (web address) shown after “[www.facebook.com/](http://www.facebook.com/)” is the claimant’s User ID or Username.

**3. ELECTION OF PAYMENT FORMAT (CHOOSE ONE).**

If any payment is made, I wish to receive it electronically, by ACH (Automated Clearing House).

Please provide:

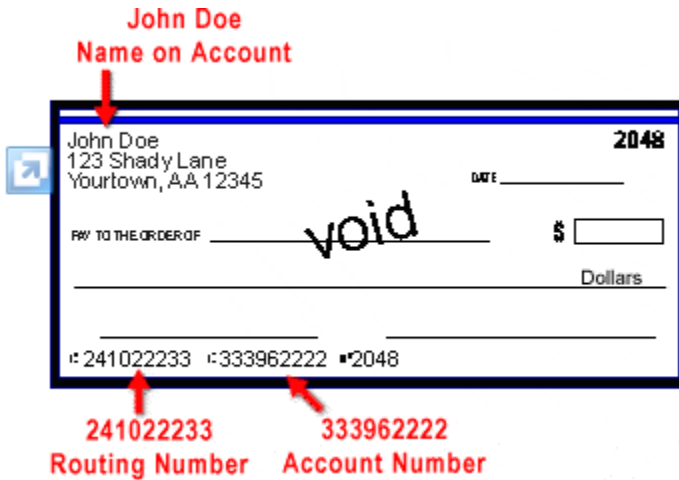
Bank Routing Number: \_\_\_\_\_

Bank Account Number: \_\_\_\_\_

Banking Institution: \_\_\_\_\_

Name on Account (if different from above): \_\_\_\_\_

The illustration below is to help you identify your Routing and Account Number. If you still are unsure which number on your check is which, please contact your financial institution.



If any payment is made, instead of receiving payment electronically by ACH, I wish to receive payment by a paper check sent to the name listed above at the address listed above.

**4. ATTESTATIONS.**

**IN ORDER TO QUALIFY FOR POSSIBLE PAYMENT, YOU MUST BE ABLE TO MAKE THE DECLARATIONS BELOW, UNDER THE PENALTY OF PERJURY.**

**I declare the following:**

1. I understand that a story about some action I took on Facebook (such as liking a page, checking in at a location, or sharing a link), along with my name and/or profile picture, may have been displayed in a Sponsored Story shown to my Facebook Friends who were authorized by me to see that action.
2. I was not aware that Facebook could be paid a fee for displaying actions such as these, along with my name and/or profile picture, to my Facebook Friends.
3. If my name and/or profile picture was displayed in a Sponsored Story, I believe I was injured by that display.
4. I am submitting only one claim form, regardless of how many Facebook accounts I have.
5. I understand that I am releasing all claims that I have against Facebook and all other "Released Parties" as set forth in Section 5 of the Settlement Agreement (available at [www.\[xxx\].com/court\\_docs/settlement\\_agreement](http://www.[xxx].com/court_docs/settlement_agreement)).

**5. SIGN AND SUBMIT THE CLAIM FORM.**

I have received notice of the class action settlement in this case, and I submit this claim form under the terms of the settlement. I also submit to the jurisdiction of the United States District Court for the Northern District of California with regard to my claim and for purposes of enforcing the release of claims provided for in the Settlement Agreement. I further acknowledge that I am bound by the terms of any Court judgment that may be entered in this action and may not bring any separate litigation against Facebook, Inc. or against any entity or person released in the Settlement Agreement related to this action, or that could have been asserted in this action, as set forth in the Settlement Agreement. I agree to furnish additional information to support this claim if required to do so.

**I declare under penalty of perjury that the foregoing attestations and all the information I have submitted in support of my claim is true and correct.**

IF SUBMITTED ELECTRONICALLY:

- I agree that by submitting this claim form I certify under the penalty of perjury of the laws of the United States of America that the foregoing is true and correct and that checking this box constitutes my electronic signature on the date of its submission.**

IF SUBMITTED BY U.S. MAIL:

**I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.**

Dated: \_\_\_\_\_

Signature: \_\_\_\_\_

\* \* \* \*

- - -

IF SUBMITTED BY MAIL, PLEASE SEND THIS CLAIM FORM TO:

*Fraleley v. Facebook, Inc., Settlement*  
c/o GCG  
[Address]  
[City], [State] [ZIP Code]

**THIS FORM MUST BE COMPLETED AND SUBMITTED ELECTRONICALLY TO THE SETTLEMENT ADMINISTRATOR AT OR BEFORE 11:59 P.M. PACIFIC TIME ON [MONTH] [DAY], [YEAR]. IF YOU ARE SUBMITTING THIS FORM BY U.S. MAIL, IT MUST BE POSTMARKED BY [MONTH] [DAY], [YEAR].**

**6. AFTER SUBMISSION OF FORM.**

Payment will be provided to class members only if the Court gives final approval to the Settlement and, if there are any appeals, after the appeals are resolved in favor of the settlement. *Additionally, the amount, if any, paid to each claimant depends upon the number of claims made. No one knows in advance how much each claimant's payment will be, and claimants may be paid nothing at all. Please be patient.*

If, after you submit a claim form, you change your postal or email address, it is your responsibility to inform the Settlement Administrator of your updated information. You may either do so by mail or email at the addresses above.



**EXHIBIT 6**  
**OPT-OUT FORM**

**FRALEY V. FACEBOOK, INC., OPT-OUT FORM**

United States District Court for the Northern District of California

Case No. 11-cv-01726-RS

Settlement Website: www.[xxx].com

**THIS FORM MUST BE COMPLETED AND SUBMITTED ELECTRONICALLY NO LATER THAN [MONTH] [DAY], [YEAR] AT 11:59 P.M. (PACIFIC). IF THIS FORM IS SUBMITTED BY U.S. MAIL, IT MUST BE POSTMARKED BY [MONTH] [DAY], [YEAR].**

**INFORMATION NECESSARY TO PROCESS REQUEST TO BE EXCLUDED (TO OPT OUT) OF THE SETTLEMENT:**

Please legibly print or type the following information:

Name (first, middle, and last): \_\_\_\_\_

Email address associated with the your (or your child's) Facebook account: \_\_\_\_\_

User ID or Username<sup>1</sup> for your (or your child's) Facebook account: \_\_\_\_\_

Class Member Number listed on the notice you (or your child) received (if available): \_\_\_\_\_

(If you did not receive an email notice about the lawsuit or no longer have access to that document, you may leave blank the item immediately above calling for your Class Member Number.)

**YOUR PERSONAL INFORMATION WILL BE USED ONLY IN CONNECTION WITH THIS OPT-OUT REQUEST. YOUR INFORMATION WILL NOT BE USED FOR ANY OTHER PURPOSE.**

**REQUEST FOR EXCLUSION/OPT-OUT:**

I have decided not to participate in the class action settlement referred to on the website referenced above (the "Settlement") and have chosen, instead, to be excluded from the class of plaintiffs in that class action. I confirm that I have received notice of the proposed Settlement in this lawsuit, I have decided to be excluded from the class, and I have decided not to participate in the proposed Settlement. By excluding myself from the Settlement, I understand that I am not entitled to receive any individual benefit from the Settlement.

**IF SUBMITTED ELECTRONICALLY:**

**I agree to the foregoing and request to be excluded.**

*(continued on the next page)*

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<sup>1</sup> To confirm your (or your child's) User ID or Username, log into the claimant's Facebook account, navigate to the profile page by clicking on the claimant's name. The portion of the URL (web address) shown after "[www.facebook.com/](http://www.facebook.com/)" is the claimant's User ID or Username.

IF SUBMITTED BY U.S. MAIL:

**I agree to the foregoing and request to be excluded.**

Dated: \_\_\_\_\_

Signature: \_\_\_\_\_

IF SUBMITTED BY MAIL, PLEASE SEND THIS OPT-OUT FORM TO:

*Fralely v. Facebook, Inc., Settlement*  
c/o GCG  
[Address]  
[City], [State] [ZIP Code]

**EXHIBIT 7**

**[PROPOSED] FINAL ORDER APPROVING  
CLASS ACTION SETTLEMENT AND JUDGMENT**

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO 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,

Defendant.

Case No. CV-11-01726 RS

**[PROPOSED] FINAL ORDER APPROVING  
CLASS ACTION SETTLEMENT AND  
JUDGMENT**

**JUDGE:** Hon. Richard Seeborg  
**COURTROOM:** 3

1 On \_\_\_\_\_, 2012, this Court heard the Motion of Plaintiffs Susan Mainzer, James  
2 H. Duval, and W.T., a minor, by and through Russell Tait as Guardian ad Litem (“Plaintiffs”) and  
3 defendant Facebook, Inc. (“Facebook”), for Final Approval of Class Action Settlement and  
4 Plaintiffs’ Motion for Award of Attorneys’ Fees and Costs and Incentive Award. This Court has  
5 considered: (a) the Amended Settlement Agreement and Release (“Settlement Agreement”);  
6 (b) the memoranda of law and supporting declarations; (c) any objections filed with or presented  
7 to the Court; (d) the Parties’ responses to any objections; and (e) arguments presented at the  
8 hearing. Based on this review and the findings below, the Court found good cause to grant the  
9 motions.

10 **FINDINGS:**

11 **1.** Unless otherwise specified, defined terms in this Order have the same definition as  
12 the terms in the Settlement Agreement.

13 **2.** This Court has jurisdiction over the subject matter of this Action, all parties to the  
14 Action, and all Class and Minor Subclass Members who have not timely and validly requested  
15 exclusion.

16 **3.** Notice was provided to Class and Minor Subclass Members in compliance with  
17 this Court’s Preliminary Approval of Class Settlement and Provisional Class Certification Order,  
18 Section 3.3 of the Settlement Agreement, due process, and Rule 23 of the Federal Rules of Civil  
19 Procedure.

20 **a.** The Publication Notice was published in the national edition of USA  
21 Today and over PR Newswire.

22 **b.** The Short Form Notice was sent to the email address associated with Class  
23 Members’ Facebook accounts. The Short Form Notice was sent to \_\_\_\_\_  
24 (number) Class and Minor Subclass members who were considered to be current Facebook users.

25 **c.** The notice given was the best method for providing such notice that was  
26 practicable under the circumstances. The notice: (i) fully and accurately informed Class and  
27 Minor Subclass Members about the lawsuit and settlement; (ii) provided sufficient information so  
28 that Class and Minor Subclass Members were able to decide whether to accept the benefits

1 offered, opt-out and pursue their own remedies, or object to the proposed settlement; (iii)  
2 provided procedures for Class and Minor Subclass Members to file written objections to the  
3 proposed settlement, to appear at the hearing, and to state objections to the proposed settlement;  
4 and (iv) provided the time, date, and place of the final fairness hearing.

5 4. There were \_\_\_\_\_ (number) timely objections to the Settlement Agreement  
6 and \_\_\_\_\_ (number) timely exclusion requests.

7 5. For the reasons stated in the Preliminary Approval of Class Settlement and  
8 Provisional Class Certification Order, and having found nothing in any submitted objections that  
9 would disturb these previous findings, this Court finds and determines that the proposed Class  
10 and Minor Subclass, as defined below, meet all of the legal requirements for class certification,  
11 for settlement purposes only, under Federal Rule of Civil Procedure 23(a) and (b)(3).

12 6. Upon review of the record, the Court hereby finds that the Settlement Agreement  
13 is, in all respects, fair, adequate, and reasonable, and therefore approves it. The Court has come  
14 to this determination pursuant to the factors outlined in cases such as *Officers for Justice v. Civil*  
15 *Service Commission*, 688 F.2d 615, 625 (9th Cir. 1982). Among other matters considered, the  
16 Court took into account: (a) the arguments raised by Facebook in its pleadings that could  
17 potentially preclude recovery by Class and Minor Subclass Members; (b) the novelty and  
18 complexity of Plaintiffs' theory of liability; (c) delays in any award to the Class and Minor Class  
19 Members that would occur due to appellate proceedings, which Facebook's defense of this Action  
20 to date suggests is a strong likelihood; (d) the amount of discovery (documentary and deposition)  
21 that has occurred; (e) the relief provided to the Class and Minor Subclass, including the \$20  
22 million Settlement Fund and injunctive relief; (f) the recommendation of the Settlement  
23 Agreement by counsel for the Parties; and (g) the number of objectors to the Settlement  
24 Agreement, demonstrating that the Class and Minor Subclass have a positive reaction to the  
25 proposed settlement.

26 7. The Court also finds that extensive arm's-length negotiations have taken place, in  
27 good faith and free from collusion, between Class Counsel and Facebook's Counsel resulting in  
28

1 the Settlement Agreement. Parts of these negotiations were presided over by the experienced  
2 mediator Hon. Edward A. Infante (ret.).

3 **8.** The Parties adequately performed their obligations under the Settlement  
4 Agreement.

5 **9.** An award of \$ \_\_\_\_\_ (total) in attorneys' fees and costs to Class  
6 Counsel is fair and reasonable in light of the nature of this case, Class Counsel's experience and  
7 efforts in prosecuting this Action, and the benefits obtained for the Class.

8 **10.** An incentive award to plaintiffs Susan Mainzer, James H. Duval, and W.T., a  
9 minor, by and through Russell Tait as Guardian ad Litem, of \$ \_\_\_\_\_ (each) is  
10 fair and reasonable in light of: (a) Plaintiffs' risks (including financial, professional, and  
11 emotional) in commencing this action as the Class Representatives; (b) the time and effort spent  
12 by Plaintiffs in litigating this action as the Class Representatives; and (c) Plaintiffs' public interest  
13 service.

14 **11.** The objections have been considered by the Court, and they are without merit.

15 **IT IS ORDERED THAT:**

16 **1. Class Certification.** The following class and subclass are certified, for settlement  
17 purposes only:

18 The Class Members are defined as:

19 All persons in the United States who have or have had a Facebook  
20 account at any time and had their names, nicknames, pseudonyms,  
21 profile pictures, photographs, likenesses, or identities displayed in a  
Sponsored Story, at any time on or before [*insert: the date of entry  
of the Preliminary Approval Order*].

22 The Minor Subclass is defined as:

23 All persons in the Class who additionally have or have had a  
24 Facebook account at any time and had their names, nicknames,  
25 pseudonyms, profile pictures, photographs, likenesses, or identities  
26 displayed in a Sponsored Story, while under eighteen (18) years of  
27 age, or under any other applicable age of majority, at any time on or  
28 before [*insert: the date of entry of the Preliminary Approval  
Order*].



1           **2. Binding Effect of Order.** This Order applies to all claims or causes of action  
2 settled under the Settlement Agreement, and binds all Class and Minor Subclass Members,  
3 including those who did not properly request exclusion under paragraph 7 of the Order Granting  
4 Preliminary Approval of Class Settlement. This Order does not bind persons who filed timely  
5 and valid requests for exclusions. Attached as Exhibit A is a list of persons who properly  
6 requested to be excluded from the settlement.

7           **3. Objections.** All objections to the Settlement are hereby overruled.

8           **4. Injunctive Relief.** Facebook is bound by the injunctive relief stated in Section  
9 2.1(a)-(e) of the Settlement Agreement (a copy of which section is attached hereto as Exhibit B)  
10 for two years following the Final Settlement Date, as defined in Section 1.13 of the Settlement  
11 Agreement.

12           **5. Compliance Audit.** During the period in which the injunctive relief remains in  
13 effect, as provided in Section 2.1(e) of the Settlement Agreement, Class Counsel shall have the  
14 right to move the Court for an Order requiring one compliance audit by a third-party auditor for  
15 good cause shown, and Facebook shall have the right to oppose such a motion. If a compliance  
16 audit is ordered, Facebook shall be responsible for paying the costs associated with one such  
17 audit.

18           **6. Attorney's Fees and Costs.** Class Counsel is awarded \$ \_\_\_\_\_  
19 (total) in fees and costs. Payment shall be made to The Arns Law Firm by Facebook pursuant to  
20 the timeline stated in Section 2.5 of the Settlement Agreement.

21           **7. Calculation of Attorneys' Fees and Costs.** The Court used the [percentage-of-  
22 recovery /lodestar] method to calculate the attorneys' fees award. [Using the lodestar method, the  
23 Court finds that Class Counsel's hours and expenses were reasonable. The Court has considered  
24 the appropriate factors to determine that a multiplier is/is not appropriate. The Court calculates a  
25 multiplier of \_\_\_ by dividing the total award (\$ \_\_\_\_\_) by the lodestar figure  
26 (\$ \_\_\_\_\_)] [The Court also used a cross-check to confirm the fee award.] [Using the  
27 percentage-of-recovery analysis, the hours and expenses are appropriate given, among other  
28 factors, the result obtained for the Class and Minor Subclass Members, including the injunctive

1 relief, the financial burden of contingent representation, and the quality of Counsel's work. *See*  
2 *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043 (9th Cir. 2002).]

3 **8. Incentive Award.** Plaintiffs Susan Mainzer, James H. Duval, and W.T., a minor,  
4 by and through Russell Tait as Guardian ad Litem, are awarded \$ \_\_\_\_\_ (each)  
5 as an incentive award. Payment shall be made pursuant to the timeline stated in Section 2.6 of the  
6 Settlement Agreement.

7 **9. Class Relief.** The Settlement Administrator will distribute payments to  
8 Authorized Claimants pursuant to the timeline and terms stated in Section 2.3 of the Settlement  
9 Agreement.

10 **10. Release.** Plaintiffs and all Class and Minor Subclass Members who did not  
11 properly request exclusion are: (1) deemed to have released and discharged all claims arising out  
12 of or asserted in this action and claims released under the Settlement Agreement, including all  
13 claims that could have been asserted in this Action; and (2) barred and permanently enjoined from  
14 asserting, instituting, or prosecuting, either directly or indirectly, these claims. The full terms of  
15 the release described in this paragraph are set forth in Sections 5.2 and 5.3 of the Settlement  
16 Agreement. The Court expressly adopts and incorporates by reference Sections 5.2 and 5.3 of the  
17 Settlement Agreement.

18 **11. No Admission of Wrongdoing.** Facebook has denied any liability, fault, or  
19 wrongdoing of any kind in connection with the allegations in this action, and as such, neither this  
20 Order, the Settlement Agreement, nor any of its terms or provisions, nor any of the negotiations  
21 or proceedings connected with it, shall be construed as an admission or concession by Facebook  
22 of the truth of any of Plaintiffs' allegations, or of any liability, fault, or wrongdoing of any kind.

23 **12. Termination.** If the Settlement Agreement terminates for any reason, this action  
24 will revert to its previous status in all respects as it existed before the Parties executed the  
25 Settlement Agreement. This Order will not waive or otherwise impact the Parties' rights or  
26 arguments. The Court expressly adopts and incorporates by reference Section 6.1 of the  
27 Settlement Agreement.

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**13. Dismissal of Action.** This Action, including all of the individual and class claims included therein, is hereby dismissed on the merits and with prejudice. The Clerk of the Court is instructed to close the file for this Action.

**14. Judgment.** The Court finds there is no just reason for delay and expressly directs that Judgment be entered immediately by the Clerk of the Court.

**15. Court’s Jurisdiction.** Without affecting the finality of the dismissal or the Judgment, pursuant to the Parties’ request, the Court will retain jurisdiction over this Action and the Parties until final performance of the Settlement Agreement including supervising the distribution of the Settlement Fund, as set forth in Section 2.3 of the Settlement Agreement, and any *cy pres* award with respect to any unclaimed funds, as set forth in Section 2.4.

**IT IS SO ORDERED AND ADJUDGED.**

DATED: \_\_\_\_\_

\_\_\_\_\_  
Hon. Richard G. Seeborg  
United States District Court Judge

## **EXHIBIT 8**

### **SPONSORED STORY EXAMPLES**

## EXHIBIT 8 - SPONSORED STORY EXAMPLES

 **John Smith** and **Jane Doe** like **Southwest Airlines**

 **Southwest Airlines**  
Like

 **John Smith** likes adidas Soccer's album **FC Dallas 4/17/11**.


 **FC Dallas 4/17/11**

23 174

 **John Smith** is supporting the UCSF Benoff Children's Hospital. Double win.

 **Eventbrite - Tech-Crunch and Crunch-Gear present TRON: Legacy in 3-D (San Francisco)**  
Eventbrite  
4 · Get Tickets

 **Jane Doe** answered Jasper's Market's question **What is your all-time favorite dessert?** with **Bananas Foster**.

**Bananas Foster** 

**Tiramusu**

**Creme brulee**

4 More...

 **Jane Doe** is going to **Jasper's Market Annual Cooking Contest — Saturday, May 12 at 11:00am in New York, New York.**

 Come participate in our contest and win a cooking getaway for 2!  
Join

 **Jane Doe** Second time today — at Starbucks with **John Smith**

 **Starbucks**  
Like  
1 1

 **John Smith** Great cause

 **Autism Thing Dark T-shirt on CafePress.com**  
[www.cafepress.com](http://www.cafepress.com)  
1 · Share

 **Jane Doe** played **Glory of Rome**.

 **Glory of Rome**  
Play

 **Jane Doe** played **Marvel: Avengers Alliance**.

 **Marvel: Avengers Alliance**  
Play

 **John Smith** used **Stitcher Radio**.

 **Stitcher Radio**  
Use

 **John Smith** likes **Ides of March**.

RECENT POST

 **Ides of March**  
Rolling Stone calls Ides of March "A big, bruising thriller." -Peter Travers



3 5 · Like

 **John Smith** likes **Stella Artois USA**.

RELATED POST

 **Stella Artois USA**  
Always good odds.



Like This Page

 **Jane Doe** likes **Lowe's Home Improvement**.

Like This Page · Tuesday at 12:06pm · Sponsored

 **Jane Doe** likes **Full Circle Fund**.

 **Full Circle Fund**  
Full Circle Fund members leverage their time, money, skills...

Yesterday at 7:27pm · Sponsored

Like Page

 **John Smith** likes Stanford Graduate School of Business.

 **Stanford Graduate School of Business**  
Like

 **John Smith** likes Obamacare.

 **Obamacare Community**  
Jane Doe and 5 other people also like this.

Like Page · Find More Pages · about an hour ago · Sponsored

 **John Smith** likes US Olympic Team.

 **US Olympic Team**  
Non-Profit Organization  
Jane Doe and 3 other people also like this.

Like Page · Find More Pages · Monday at 5:04pm · Sponsored

 **John Smith** likes George W. Bush Presidential Center.

RECENT POST

 **George W. Bush Presidential Center** Like Page  
President Bush and Warrior Open tournament director Carolyn Creekmore played golf over Memorial Day weekend with wounded warriors Nick Bradley and Dave Romanowsky, who competed in the inaugural Warrior Open last year.

 **Wall Photos**  
President Bush and Warrior Open tournament director Carolyn Creekmore played gol...  
See More  
By: George W. Bush

Like · Comment · Share ·  709  42  46 · 