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10 *Attorneys for Objectors John Schachter (on behalf of himself and his*
11 *minor son S.M.S.), J.J.R. (through his mother Judy Reidel), Kim Parsons*
12 *(on behalf of herself and her minor daughter C.B.P.), Ann Leonard (on*
behalf of herself and her minor daughter D.Z.), R.P. (through her mother
Margaret Becker), and J.C. (through his father Michael Carome)

13
14 **UNITED STATES DISTRICT COURT**
15 **NORTHERN DISTRICT OF CALIFORNIA**
SAN FRANCISCO DIVISION

16 ANGEL FRALEY, et al., individually and on
17 behalf of all others similarly situated,
18 Plaintiffs,
19 v.
20 FACEBOOK, INC., et al.,
21 Defendants.

Case No. CV 11-01726 RS

**SUPPLEMENTAL MEMORANDUM
REGARDING NEW FACTUAL
DEVELOPMENT**

Date: June 28, 2013
Time: 10:00 a.m.
Department: 3
Judge: Hon. Richard Seeborg

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1 Class members John Schachter, on behalf of himself and his minor son S.M.S.; the minor
2 child J.J.R. (through his mother Judy Reidel); Kim Parsons, on behalf of herself and her minor
3 daughter C.B.P.; Ann Leonard, on behalf of herself and her minor daughter D.Z.; the minor child
4 R.P. (through her mother Margaret Becker); and the minor child J.C. (through his father Michael
5 Carome) submit this memorandum to supplement their objection to the proposed class settlement
6 of this case in light of a recent and material factual development.

7 Earlier this month, defendant Facebook announced that it would be unilaterally dropping
8 the advertising product “Sponsored Stories” — the subject of this case and settlement agreement.
9 *See, e.g.,* Ex. 1, Jessica Guynn, *Facebook aims to drive revenues by making it easier to advertise*,
10 *Los Angeles Times*, June 6, 2013.¹

11 Facebook’s abandonment of the program that is the subject of the lawsuit and the source
12 of plaintiffs’ claims further undermines — in fact, seems to eliminate entirely — the value of the
13 proposed settlement’s injunctive relief, which was already small in light of its limited duration
14 and design. *See* Doc. 308 (Objections of John Schachter et al.), at 16-18. The proposed
15 settlement refers specifically to “Sponsored Stories” in describing what limitations and controls
16 Facebook plans to make available to the class. *See* Doc. 235-1 (Amended Settlement Agreement
17 and Release, or “ASAR”), § 2.1. Indeed, “Sponsored Stories” is a defined term of the proposed
18 agreement: the term refers to “content displayed by or on behalf of Facebook that Facebook
19 markets or refers to as ‘Sponsored Stories.’” *Id.* § 1.29. By eliminating this category of content,
20 Facebook has defined away any obligation it would have under the proposed agreement to
21 comply with the injunctive relief related to “Sponsored Stories” — such as the provision giving
22 members limited rights to opt out of appearing in “Sponsored Stories,” *id.* § 2.1(b), and the
23 provision enabling parents, under some circumstances, to prevent their children from appearing
24 in “Sponsored Stories,” *id.* § 2.2(c).

25 Of course, Facebook’s decision to stop using the term “Sponsored Stories” does not
26 necessarily signal an end to the practices challenged in the lawsuit. Rather, as Facebook’s

27 ¹ Available at [http://www.latimes.com/business/technology/la-fi-tn-facebook-advertising-](http://www.latimes.com/business/technology/la-fi-tn-facebook-advertising-20130606,0,4916401.story)
28 20130606,0,4916401.story.

1 product marketing director explained, “Sponsored stories as an idea doesn’t go away.” Ex. 2,
2 Cotton Delo, *Facebook Drops Sponsored Stories As It Pares Down Ad Formats*, Advertising
3 Age, June 6, 2013.² This statement suggests that Facebook will continue its practice of using its
4 users’ likenesses in advertisements without their consent (i.e., the “idea” of “Sponsored
5 Stories”), albeit without calling the practice “Sponsored Stories.” If that is the case, and the
6 settlement is approved, plaintiffs and the class they seek to represent will be left with the worst
7 of both worlds: the practice they sued to stop will continue, and the settlement agreement that
8 they obtained will be of no value in curtailing that practice.

9 For the foregoing reasons, in addition to those that Objectors have already raised, the
10 Court should deny final approval of the proposed class action settlement.

11
12 Dated: June 26, 2013

Respectfully submitted,

13 /s/ Scott Michelman

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28 ² Available at <http://adage.com/article/digital/facebook-drops-sponsored-stories-cuts-ad-formats/241969>.