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FACEBOOK, INC.
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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION

ANGEL FRALEY; PAUL WANG; SUSAN
 MAINZER; JAMES H. DUVAL, a minor, by
 and through JAMES DUVAL, as Guardian ad
 Litem; and WILLIAM TAIT, 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 LHK (PSG)

**FACEBOOK’S REQUEST FOR LEAVE TO
 FILE STATEMENT OF RECENT DECISIONS
 RELEVANT TO MOTION TO DISMISS
 SECOND AMENDED CLASS ACTION
 COMPLAINT**

Judge: Hon. Lucy H. Koh
 Trial date: None Set

1 On July 1, 2011, Defendant Facebook, Inc. (“Facebook”) filed a Motion to Dismiss
2 Plaintiffs’ Second Amended Complaint (“Motion”) on multiple grounds, including that: (1)
3 Plaintiffs fail to allege an injury sufficient for Article III standing, or for liability under California
4 Civil Code Section 3344 or under California’s Unfair Competition Law, Business and Professions
5 Code Section 17200; and (2) Plaintiffs’ claims are barred by the Communications Decency Act,
6 47 U.S.C. § 230 (“CDA § 230”). On September 29, 2011, the Court heard argument on
7 Facebook’s Motion and took the matter under submission. This week, two Northern District of
8 California judges issued decisions that bear on the pending Motion.

9 Facebook’s Motion, Plaintiffs’ opposition, and Facebook’s reply all discussed, in some
10 detail, the dismissal without prejudice entered by the Honorable Richard Seeborg in *Cohen v.*
11 *Facebook, Inc.*, No. CV-10-5282 RS (N.D. Cal.), on June 28, 2011. The plaintiffs in the *Cohen*
12 action filed a First Amended Complaint on July 18, 2011, alleging, as here, violations of Civil
13 Code Section 3344 and Business and Professions Code Section 17200. On October 27, 2011,
14 Judge Seeborg granted Facebook’s motion to dismiss the First Amended Complaint with
15 prejudice and entered judgment for Facebook. The Court’s decision discusses issues of
16 cognizable injury and standing that are directly relevant to the issues raised in Facebook’s Motion
17 here and should be considered.

18 Earlier this week, on October 26, 2011, the Honorable Edward M. Chen issued a decision
19 in *Levitt v. Yelp! Inc.*, No. CV-10-1321 EMC (N.D. Cal.), granting the defendant’s motion to
20 dismiss, with prejudice, on the ground that the defendant—the website www.yelp.com—is
21 immune from suit under CDA § 230. The Court’s discussion of CDA immunity, including
22 whether a defendant’s intent is relevant, is germane to the pending Motion here and should be
23 considered.

24 Under Civil Local Rule 7-3(d), a party must seek leave of the Court to file a Statement of
25 Recent Decisions concerning a decision issued *after* the date of the noticed hearing. Facebook
26 hereby seeks leave of the Court to file a Statement of Recent Decisions concerning the decisions
27 in *Cohen v. Facebook* and *Levitt v. Yelp!*, both of which were decided approximately four weeks
28 after the hearing on Facebook’s Motion. Consistent with Civil Local Rule 7-3(d)(2), if the Court

1 grants Facebook's request, Facebook will provide a Statement of Recent Decisions that includes
2 only copies of the decisions, without argument.

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4 Dated: October 28, 2011

COOLEY LLP

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6 By: /s/ Matthew D. Brown

Matthew D. Brown (196972)

7 Attorneys for Defendant FACEBOOK, INC.
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