

EXHIBIT H

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10 Attorneys for Defendant
11 FACEBOOK, INC.

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF LOS ANGELES – CENTRAL DISTRICT

14 DAVID A. COHEN, a minor, by and through
15 ROBIN S. COHEN as Guardian ad Litem;
16 SHELBY A. ORLAND, a minor, by and
17 through MARCIA J. ORLAND as Guardian
18 ad Litem; for all others similarly situated,

19 Plaintiffs,

20 v.

21 FACEBOOK, INC., a Delaware corporation,
22 and DOES 1 through 100, Inclusive,

23 Defendants.

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Case No. BC 444482
Consolidated with No. BC 454799
(Class Action)

**NOTICE OF ENTRY OF ORDER
GRANTING FACEBOOK, INC.'S
DEMURRER TO THE FIRST
MASTER CLASS ACTION
COMPLAINT**

Judge: Hon. Debre Katz Weintraub
Courtroom: 47

Complaint Filed: July 5, 2011
Trial Date: Not set

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on September 22, 2011, in the above entitled action, the
3 Court held a hearing on Facebook, Inc.'s Demurrer to the First Master Class Action Complaint.
4 The Court entered an order sustaining Facebook Inc.'s Demurrer as to each cause of action, and
5 granted Plaintiffs leave to amend within twenty (20) days.

- 6 • Attached as Exhibit A is a true and correct copy of the Court's September 22, 2011
7 minute order concerning this matter.
- 8 • Attached as Exhibit B is a true and correct copy of the transcript of the hearing on
9 September 22, 2011.

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Dated: September 30, 2011

COOLEY LLP

By: Matthew D. Brown / MD
Matthew D. Brown

Attorneys for Defendant FACEBOOK, INC.

726212 /SD

EXHIBIT A

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE 09/22/11

DEPT. 47

HONORABLE DEBRE K WEINTRAUB

JUDGE

R. CASTLE

DEPUTY CLERK

HONORABLE
#4

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

A RODRIGUEZ/C.A

Deputy Sheriff

S. PRICE, CSR #11954

Reporter

8 30 am

BC444482

Plaintiff ANTHONY STUART [X]
 Counsel JOHN C. TORJESEN [X]
 GARY T STEVENS, JR [X]
 Defendant
 Counsel COOLEY LLP
 BY: MATTHEW D BROWN [X]

DAVID A COHEN ET AL
 VS
 FACEBOOK INC
 (NON-COMPLEX 09-07-10)
 170 6 KENDIG/PLFF
 R/T BC454799 (3/15/11)

NATURE OF PROCEEDINGS:

HEARING OF DEFENDANT FACEBOOK, INC , ON DEMURRER TO COMPLAINT

Matters are called for hearing.

The Court issues its oral tentative as fully reflected in the notes of the official court reporter this date, incorporated herein by reference.

The Court, having read and considered all papers filed and heard argument, rules as follows

Defendant Facebook, Inc.'s demurrer to the first, second and third causes of action are SUSTAINED with leave to amend. Plaintiffs' claims based on state law for Facebook's alleged failure to obtain the parental consent of users aged 13 to 17 to the commercial use of their name and likeness is preempted by the Children's Online Privacy Protection Act (15 U.S.C. 6501, et seq; Children's Online Privacy Protection Rule (16 CFR Part 312)

Plaintiff is given 20 days leave to amend

The Court's ruling is more fully reflected in the notes of the official court reporter this date, incorporated herein by reference

Defendant to give notice.

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| MINUTES ENTERED 09/22/11 COUNTY CLERK |
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EXHIBIT B

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 47

HONORABLE DEBRE K. WEINTRAUB, JUDGE

DAVID A. COHEN, A MINOR, BY AND)
THROUGH ROBIN S. COHEN AS GUARDIAN)
AD LITEM, SHELBY A. ORLAND, A MINOR,)
BY AND THROUGH MARCIA J. ORLAND AS)
GUARDIAN AD LITEM; FOR ALL OTHERS)
SIMILARLY SITUATED,)

PLAINTIFFS,)

VS.)

CASE NO. BC444482

FACEBOOK, INC., A DELAWARE CORPORATION)
AND DOES 1 THROUGH 100, INCLUSIVE,)

DEFENDANTS.)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
HEARING ON DEMURRER
THURSDAY, SEPTEMBER 22, 2011

APPEARANCES:
FOR PLAINTIFFS:

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JOHN C. TORJESEN & ASSOCIATES, PC
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SQUITIERI & FEARON, LLP
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FOR DEFENDANT:

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SUSIE PRICE, #11954
OFFICIAL COURT REPORTER

08:45 1 CASE NUMBER: BC444482
2 CASE NAME: DAVID A. COHEN VS.
3 FACEBOOK, INC., ET AL.
4 LOS ANGELES, CALIFORNIA THURSDAY, SEPTEMBER 22, 2011
5 DEPARTMENT 47 HON. DEBRE K. WEINTRAUB, JUDGE
6 OFFICIAL REPORTER: SUSIE PRICE, CSR #11954
7 TIME: 8:45 A.M.
8 APPEARANCES: (AS HERETOFORE NOTED)

9 ~*~

10
11 THE COURT: WE'RE CALLING THE CALENDAR. THE FIRST
12 CASE IS COHEN, ET AL. VERSUS FACEBOOK, INC., BC444482.

13 WILL ANYONE ASSOCIATED WITH THIS CASE PLEASE
14 COME FORWARD.

08:45 15 MR. STUART: GOOD MORNING, YOUR HONOR TONY STUART FOR
16 THE PLAINTIFFS.

17 THE COURT: FOR THE PLAINTIFFS?

18 OKAY. YOU'RE OVER HERE. DEFENDANT IS OVER
19 THERE.

20 MR. STUART: THAT'S TRUE. THANK YOU. BEEN AWHILE
21 SINCE I DID THAT.

22 THE COURT: THAT'S OKAY. LET'S PUT THE PLAINTIFFS
23 OVER HERE AND DEFENSE OVER HERE.

24 OKAY. LET'S START OVER HERE. COUNSEL.

25 MR. TORJESEN: JOHN TORJESEN FOR THE PLAINTIFFS, YOUR
26 HONOR.

27 MR. STEVENS: GARRY STEVENS FOR THE PLAINTIFFS.

28 MR. STUART: TONY STUART, PLAINTIFFS, YOUR HONOR.

08:45 1 MR. BROWN: MATTHEW BROWN FOR DEFENDANT FACEBOOK.
2 THE COURT: AND GOOD MORNING. ARE WE EXPECTING ANY
3 OTHER COUNSEL ON THIS MATTER?

4 MR. BROWN: NOT THAT I'M AWARE OF.

5 MR. TORJESEN: NOT FOR THE PLAINTIFFS.

6 THE COURT: HAVE A SEAT. THANK YOU.

7 WE'RE HERE ON A DEMURRER TO THE FIRST MASTER
8 CLASS ACTION COMPLAINT. THE MOVING PARTY BEING DEFENDANT
9 FACEBOOK AND THE RESPONDING PARTY BEING THE PLAINTIFFS.

10 THIS COURT IS GOING TO GIVE ITS TENTATIVE AND
11 THEN IF ANY PARTY WISHES TO BE HEARD, YOU CERTAINLY MAY.

12 I WANT TO THANK THE PARTIES FOR THEIR VARIOUS
13 PAPERS. THE COURT HAS READ AND REVIEWED THEM AND
14 CONSIDERED THEM. ONCE THE COURT GIVES A TENTATIVE, YOU
08:46 15 CERTAINLY CAN RESPOND AND ADDRESS THE COURT'S MATTER. I
16 WILL ASK YOU THOUGH THAT YOU NOT REPEAT WHAT'S IN YOUR
17 PAPERS BECAUSE THE COURT HAS READ THEM.

18 FIRST, I WANT TO ADDRESS THE JUDICIAL NOTICE
19 REQUEST. THE REQUEST NOS. 1 AND 2 ARE GRANTED. REQUEST 3
20 THROUGH 8 ARE DENIED.

21 THE DEMURRER TO THE FIRST CAUSE OF ACTION FOR
22 VIOLATION OF CIVIL CODE SECTION 3344; THE SECOND CAUSE OF
23 ACTION FOR A VIOLATION OF THE RIGHT OF PRIVACY UNDER THE
24 CALIFORNIA CONSTITUTION ARTICLE 1, SECTION 1; AND THE THIRD
25 CAUSE OF ACTION FOR A VIOLATION OF BUSINESS AND PROFESSIONS
26 CODE SECTION 17200 IS SUSTAINED WITH LEAVE TO AMEND.

27 PLAINTIFF CLAIMS, BASED ON STATE LAW FOR
28 FACEBOOK'S ALLEGED FAILURE TO OBTAIN THE PARENTAL CONSENT

08:48 1 OF USERS AGE 13 TO 17 TO THE COMMERCIAL USE OF THEIR NAME
2 AND LIKENESS IS PREEMPTED BY THE CHILDREN'S ONLINE PRIVACY
3 PROTECTION ACT 15 USC SECTION 6501 TO 6508 AND ALSO SEE
4 CFR'S SECTION 312.5.

5 THE COURT WILL GRANT PLAINTIFFS AN OPPORTUNITY
6 TO REDEFINE THE PROPOSED CLASS TO CLAIMS THAT ARE NOT
7 PREEMPTED. PLAINTIFFS ARE GIVEN 20 DAYS LEAVE TO AMEND.

8 DEFENDANT FACEBOOK TO GIVE NOTICE.

9 THAT'S THE TENTATIVE. DOES ANY PARTY WISH TO
10 BE HEARD?

11 MR. TORJESEN: YOUR HONOR, MAY I ASK A QUESTION
12 BEFORE I DECIDE WHETHER I NEED TO BE HEARD OR NOT? AND
13 THAT IS IS THE DEMURRER OTHERWISE OVERRULED?

14 THE COURT: THERE ARE CERTAIN MATTERS THAT WOULD BE
08:48 15 ADVISORY AT THIS TIME, SO THE COURT IS NOT GOING TO GIVE
16 ADVISORY OPINIONS, SO THE ANSWER IS NO.

17 THE COURT HAS NOT ADDRESSED THE OTHER MATTERS
18 WITH RESPECT TO IT. THERE ARE SOME CONCERNS THAT THE COURT
19 DOES HAVE WITH RESPECT TO CERTAIN MATTERS THAT WERE RAISED.
20 AND THERE ARE SOME THE COURT FINDS NONMERITORIOUS AND
21 THERE'S SOME THAT WILL DEPEND UPON HOW THE REFILEING IS DONE
22 IF THAT'S CHOSEN BY THE PARTIES TO AMEND.

23 MR. TORJESEN: PLAINTIFFS WOULD LIKE TO BE HEARD,
24 YOUR HONOR.

25 THE COURT: THEN I WOULD LIKE TO HEAR FROM YOU.

26 MR. TORJESEN: THANK YOU.

27 YOUR HONOR, ON THE ONE HAND THIS IS A SIMPLE
28 CASE; ON THE OTHER, IT'S A LITTLE BIT COMPLICATED BECAUSE

08:49 1 WE'RE OUT IN SOME NEW FIELDS OF FACTS THAT DIDN'T EXIST,
2 YOU KNOW, A COUPLE DECADES AGO, AND IT'S SOME COMPLICATED
3 LAW.

4 TWO ISSUES LIKE -- I WOULD LIKE TO ADDRESS
5 INITIALLY -- AND THIS NOT -- I'M NOT REPEATING THINGS THAT
6 ARE IN OUR PLEADINGS. I RESPECT THAT OF THE COURT.

7 FIRST, THE COMPLAINT, THE FACTS IN THE
8 COMPLAINT ARE WHAT THE PLAINTIFFS WERE RELYING ON AND THE
9 DEFENDANTS HAVE MISSTATED REPEATEDLY CRITICAL FACTS IN THE
10 COMPLAINT THAT I WANT TO BRING TO THE COURT'S ATTENTION.
11 AND ONE FACT IN PARTICULAR STANDS OUT AND IT CHANGES THE
12 ANALYSIS THROUGHOUT.

13 WE CLEARLY ALLEGE THAT DEFENDANT'S USE OF THE
14 NAME AND LIKENESS OF THE PLAINTIFFS IS IN THE ADVERTISING.
08:50 15 OVER AND OVER WE SAY IN THE COMPLAINT, IT'S IN THE
16 ADVERTISING. THE DEFENDANT COMES ALONG AND SAYS, WELL, WE
17 SOMETIMES POST IT NEXT TO THE ADVERTISING OR ALONGSIDE THE
18 ADVERTISING.

19 WE NEVER ALLEGED THAT. IT'S NOT IN THE
20 PLEADINGS. THE PLEADINGS PRESENT TO THE COURT A SITUATION
21 WHERE THE NAME AND LIKENESS IS USED IN THE ADVERTISING
22 WHICH THEN TRIGGERS A COMPLETELY DIFFERENT SET OF RULES
23 RELATING TO COMMERCIAL SPEECH AS OPPOSED TO, CAN WE JUST
24 PUBLISH THIS STORY THAT JUST HAPPENS TO ONLY HAVE THREE
25 WORDS. IT'S SHORTER THAN THE HUMPTY DUMPTY STORY. IT'S
26 ADVERTISING THAT WE'RE TALKING ABOUT IN THE ADVERTISING.

27 THE OTHER ISSUE IS WITH THE REQUEST FOR
28 JUDICIAL NOTICE AND SOME OF THESE OTHER FACTS AND SOME OF

08:51 1 THESE OTHER ARGUMENTS, AND I THINK IT APPLIES TO WHAT THE
2 COURT IS ASKING FOR US TO REBRIEF AND SOME OF THE OTHER
3 ISSUES --

4 THE COURT: I'M NOT ASKING FOR REBRIEFING, COUNSEL.
5 MR. TORJESEN: NOT REBRIEFING. TO AMEND.

6 THE COURT: WHAT THE COURT GAVE YOU AN OPPORTUNITY IS
7 TO AMEND TO ADDRESS THE CONCERN WITH RESPECT TO THE
8 PREEMPTION DEALING WITH THE CHILDREN'S ONLINE PRIVACY
9 PROTECTION ACT. AND THE COURT IS NOT ASKING FOR
10 REBRIEFING. THE DEMURRER HAS BEEN SUSTAINED WITH LEAVE TO
11 AMEND.

12 MR. TORJESEN: YOUR HONOR, SOME OF THE ISSUES THAT
13 ARE RAISED BY THE DEFENDANTS ARE MORE APPROPRIATELY RAISED
14 BY A MOTION FOR SUMMARY JUDGMENT, ARGUING WHAT FACTS EXIST
08:52 15 AND WHAT DO NOT FACTS EXIST.

16 AND EVEN AS TO THE CHILD ONLINE PROTECTION
17 PRIVACY ACT ISSUES, THOSE ARE ISSUES THAT MORE SPECIFICALLY
18 COULD BE ADDRESSED OUTSIDE OF THAT, JUST AS A PRELIMINARY
19 MATTER.

20 IF I CAN THEN BACK UP AND SET THE CONTEXT FOR
21 WHERE THIS CASE REALLY ARISES.

22 THE COURT: I REALLY WOULD APPRECIATE IF YOU WANT TO
23 FOCUS SPECIFICALLY TODAY ON THE DEMURRER AND THE TENTATIVE
24 AND WHAT YOU WANT THE COURT TO FOCUS ON AS OPPOSED TO
25 GENERALLY WITH RESPECT TO THE CASE IF YOU CAN DIRECT YOUR
26 COMMENTS TO THAT, COUNSEL.

27 MR. TORJESEN: YES, YOUR HONOR.

28 THE ACTION THAT WE'RE PROCEEDING ON IS

08:53

1 MISAPPROPRIATION OF A CHILD'S NAME AND LIKENESS. AND THE
2 COURT'S HAVE OVER AND OVER SAID THAT INVOLVES TWO CONCEPTS,
3 IT INVOLVES A PRIVACY RIGHT WHICH IS PERSONAL AND IT
4 INVOLVES A PUBLICITY RIGHT WHICH IS A PROPERTY RIGHT.

5 AND WHEN YOU DEAL WITH PROPERTY RIGHTS WITH
6 CHILDREN OR PROPERTY RIGHTS IN GENERAL, IT HAS A COMPLETELY
7 DIFFERENT WAY OF DEALING WITH IT. CHILDREN CAN'T MAKE
8 DEALS REGARDING PROPERTY RIGHTS.

9 WHEN YOU LOOK AT THE COPPA ISSUES, THAT IS FOR
10 A PRIVACY MATTER. IT'S NOT FOR A PROPERTY ISSUE. SO WHAT
11 OUR CLAIM IS AGAINST FACEBOOK IS THEIR MISHANDLING OF THE
12 PROPERTY RIGHTS HERE.

08:54

13 AND THE PROPERTY RIGHT IS THE RIGHT TO CONTROL
14 YOUR NAME AND LIKENESS. THAT, AND EVEN THEY CITE IT CAN
15 TAKE YEARS TO DEVELOP THAT. AND THE LAW RECOGNIZES THAT WE
16 WANT PARENTS INVOLVED IN CHILDREN NEGOTIATING PROPERTY.

17 AND FACEBOOK IS SAYING, NO, WE DON'T NEED THE
18 PARENTS INVOLVED WITH IT. EVEN THOUGH IT TAKES YEARS TO
19 LEARN, CHILDREN HAVE A MINOR, LESSER DEVELOPMENT SKILL, AND
20 SO PARENT INVOLVEMENT IS IMPORTANT ON THESE PROPERTY THINGS
21 AND THE LAW RECOGNIZES.

22 WHEN WE GET TO THE ONLINE STATUTE, IT IS -- AND
23 THIS MORNING I WENT TO DOUBLE CHECK. IT STARTED BECAUSE
24 THEY WERE CONCERNED ABOUT ABUSE AND EXPLOITATION OF
25 CHILDREN.

26 AND IF YOU READ THE SECTION THAT'S PRECLUDED,
27 IT'S COLLECTING OF INFORMATION FROM CHILDREN, OKAY. IT
28 JUST PRECLUDES COLLECTING INFORMATION OF CHILDREN.

08:55

1 COUNSEL SAYS IN HIS BRIEF "USE," BUT THE
2 STATUTE DOESN'T SAY THAT. IT JUST SAYS YOU CAN'T COLLECT
3 INFORMATION FROM CHILDREN UNDER 13 WITHOUT PARENTAL
4 CONSENT.

5 ONE OF THE CONSEQUENCES IS IF YOU HAVE IT, YOU
6 KNOW -- USING IT IMPLIES THAT YOU HAVE IT AND YOU BETTER
7 SHOW CONSENT BUT IT'S NOTHING BEYOND THAT. IN THIS CASE
8 WE'RE NOT COMPLAINING ABOUT THE USE OF IT. THERE ARE --
9 WE'RE COMPLAINING -- WE'RE NOT COMPLAINING ABOUT THE
10 COLLECTING OF IT. WE'RE COMPLAINING ABOUT THE USE OF IT,
11 SELLING IT TO ANOTHER COMPANY FOR INCLUSION IN AN
12 ADVERTISEMENT THAT FACEBOOK STRUCTURES AND DISTRIBUTES
13 ONLINE WITHOUT CONSENT. OKAY.

08:55

14 AND NOTHING ABOUT COPPA INHIBITS THAT. IF THE
15 COURT READS COPPA THAT BROADLY, THEN EVERYTHING IS
16 PRECLUDED. BECAUSE IT DOESN'T SAY -- WHEN DOES IT STOP?
17 DOES IT GIVE IMMUNITY TO ANYTHING DONE ONLINE FOR ADULTS?
18 IT REALLY WAS DESIGNED TO PREVENT -- I HAVE KIDS, AND KIDS
19 SITTING DOWN AT A COMPUTER CAN CLICK THE BUTTONS AND SEE
20 THE LIGHTS AND GET INFORMATION AND GIVE INFORMATION AND
21 RESPOND. AND IT'S A THREAT BECAUSE THE KIDS ARE
22 UNSUPERVISED AND SOMETIMES GIVE INFORMATION AND SOMETIMES
23 WITH A VIDEO CAN GIVE INAPPROPRIATE PHOTOS ONLINE.

24 AND SO ONE WAY OF STOPPING IT IS TO SAY, YOU
25 CAN'T GET INFORMATION FROM CHILDREN. IT'S A WAY OF
26 PROTECTING CHILDREN ON IT WITHOUT THE CONSENT OF THE
27 PARENTS. OKAY.

28 IT'S NOTHING BROADER THAN THAT. AND THE

08:56 1 STATUTE SAYS ANYTHING INCONSISTENT WITH THIS. WELL,
2 NOTHING WE HAVE ALLEGED IN TERMS OF THEM SELLING
3 INFORMATION IS INCONSISTENT WITH A PROHIBITION AGAINST
4 COLLECTING INFORMATION FOR MINORS. IN FACT, IT'S
5 CONSISTENT WITH THAT.

6 THE COURT: THANK YOU, COUNSEL.

7 IS THERE ANYTHING ELSE? ANY OF YOUR
8 COLLEAGUES?

9 OKAY, COUNSEL --

10 MR. TORJESEN: I WANT TO ADD --

11 THE COURT: I'M SORRY.

12 MR. TORJESEN: -- SAY ONE OTHER ISSUE.

13 THE COURT: THAT'S FINE.

14 MR. TORJESEN: AND THAT IS HAVING TO DO -- ONE OF THE
08:57 15 ARGUMENTS THEY MAKE IS THERE'S NO ISSUE OF VALUE SHOWING,
16 OKAY.

17 AND I THINK THE VALUE FOR THE CHILD'S NAME AND
18 LIKENESS IS -- CAN CLEARLY BE ESTABLISHED FROM THE
19 COMMERCIAL USE. THEY'RE SELLING IT FOR VALUE. IT'S -- AND
20 JUST BECAUSE A CHILD HASN'T SOLD IT, THE SUPREME COURT IN
21 LAGOSI SAID YOU DON'T HAVE TO BE ENGAGED IN IT. AND A
22 CHILD MIGHT NOT HAVE THE TIME TO DEVELOP IT YET WITHOUT THE
23 PARENTAL CONSENT.

24 I'M REMINDED OF SOMEBODY WHO HAS A CABIN IN THE
25 COLORADO ROCKIES AND DOESN'T VISIT VERY OFTEN. AND
26 SOMEBODY GOES IN THERE AND SAYS, WELL, YOU KNOW, THEY
27 HAVEN'T BEEN HERE FOR A COUPLE YEARS. I'LL JUST GO IN
28 THERE AND LIVE.

08:58 1 AND THEN THEY FIND OUT ABOUT IT AND THEY SAY,
2 WELL, YOU'VE BEEN TAKING OUR PROPERTY RIGHT. YOU OWE US
3 FOR THE VALUE OF THAT USE.

4 AND THEY SAY, WELL, YOU NEVER RENTED IT ANYWAY,
5 SO WE GET IT.

6 THAT'S NOT TRUE. THEY TOOK SOMETHING OF VALUE.
7 AND IT'S -- THAT'S WHY YOU LOOK TO -- IT'S A PROPERTY LOSS.
8 AND YOU LOOK TO FAIR MARKET VALUE FOR THAT ITEM TAKEN,
9 RATHER THAN SOME OTHER -- WHAT'S THE OUT-OF-POCKET MEASURE.

10 SPECIFICALLY THOUGH ON THE COPPA, THERE IS NOT
11 A CONFLICT WITH IT, THEY HAVEN'T SHOWN IT, AND I BELIEVE
12 THAT OUR CLASS AND THE PLEADINGS FULLY PROTECT THAT, YOUR
13 HONOR.

14 THE COURT: THANK YOU.

08:58 15 AND YOU WERE SPEAKING; DID ANY OTHER
16 PLAINTIFF -- THAT'S FINE, COUNSEL. THANK YOU, COUNSEL.

17 I'LL HAVE YOU RESPOND.

18 MR. BROWN: MATTHEW BROWN FOR DEFENDANT FACEBOOK.

19 SO MUCH OF MR. TORJESEN'S ARGUMENT ACTUALLY
20 WENT TO THE STANDING ISSUE AND THE NO INJURY ISSUE UNDER
21 . 3344. I UNDERSTAND THAT THE COURT DID NOT REACH THOSE
22 ISSUES IN ITS TENTATIVE RULING.

23 UNLESS THE COURT WANTS TO HEAR FROM ME ON THOSE
24 ISSUES, I'M NOT GOING TO RESPOND TO THOSE ISSUES.

25 THE COURT: THAT'S FINE. NO, THE COURT DIDN'T REACH
26 THOSE BECAUSE THE COURT, BASED UPON THE PREEMPTION ISSUE
27 ALLOWED THE PARTIES AND THAT WAS WHAT THE TENTATIVE
28 ADDRESSED.

08:59

1 MR. BROWN: SO I'M NOT GOING TO --

2 THE COURT: THAT'S FINE.

3 MR. BROWN: -- ADDRESS THOSE ARGUMENTS.

4 MR. TORJESEN DID SAY -- AND I HAVE TO RESPOND
5 TO THIS -- THAT WE'VE SOMEHOW MISSTATED THE FACTUAL
6 ALLEGATIONS IN THE COMPLAINT. I THINK THAT'S COMPLETELY
7 INCORRECT. MAYBE THAT GOES WITHOUT SAYING, BUT I THINK I
8 SHOULD SAY IT. I THINK WE'VE BEEN FAITHFUL TO THE FACTUAL
9 ALLEGATIONS OF THE COMPLAINT.

10 MR. TORJESEN SAID THAT WHAT WE'RE ESSENTIALLY
11 TRYING TO DO IS TREAT THIS LIKE A MOTION FOR SUMMARY
12 JUDGMENT. NOTHING COULD BE FURTHER FROM THE TRUTH.

09:00

13 AND IN FACT MY UNDERSTANDING OF THE COURT'S
14 TENTATIVE RULING WAS THAT YOU WERE TAKING JUDICIAL NOTICE
15 OF EXHIBITS A AND B TO THE DECLARATION OF JEFFREY GLITKIN
16 WHICH ARE THE PREVIOUS COMPLAINTS FILED IN THE COHEN AND
17 METH MATTERS, AS OPPOSED TO THE OTHER EXHIBITS. AND SO I
18 THINK ANY ARGUMENT THAT THIS IS SOMEHOW BEING TREATED LIKE
19 A MOTION FOR SUMMARY JUDGMENT ARE UNAVAILING.

20 WITH RESPECT TO THE COPPA PREEMPTION ARGUMENT,
21 WE'VE CITED THE LANGUAGE AT ISSUE ON PAGE 9 OF OUR DEMURRER
22 AND PROVIDED THE CITATIONS TO THE AUTHORITY THERE. SO ONCE
23 AGAIN, I DON'T THINK THAT WE ARE SOMEHOW TRYING TO STRETCH
24 THE LANGUAGE OF THE FEDERAL STATUTE OR ANYTHING OF THAT
25 NATURE.

26 AND, YOU KNOW, OUR POSITION IS SIMPLY THAT THE
27 CONGRESS HAS ALREADY EXPRESSED WHAT IT INTENDS TO DO WITH
28 RESPECT TO -- WITH RESPECT TO MINORS AND THEIR INTERNET

09:01 1 USAGE. IN FACT, CONGRESS EXPRESSLY LOOKED AT AN EARLIER
2 VERSION OF THE BILL THAT WOULD HAVE APPLIED TO MINORS AGES
3 13 TO 16, NOT UNDER 13 AS THE BILL FINALLY CAME OUT. AND
4 THEY REJECTED THAT.

5 AND SO AS THE BILL FINALLY CAME OUT AND WAS
6 ENACTED, IT ONLY APPLIED TO MINORS UNDER THE AGE OF 13.
7 AND THE REVISED BILL THAT WAS LATER PASSED ACTUALLY THEN
8 INCLUDED THE EXPRESS PREEMPTION PROVISION. SO WE DON'T
9 EVEN NEED TO NECESSARILY GET INTO CONFLICT PREEMPTION
10 DOCTRINE AND THINGS OF THAT SORT BECAUSE THERE'S AN EXPRESS
11 PREEMPTION PROVISION THAT GOVERNS RIGHT IN THE BODY OF THE
12 STATUTE.

13 THE COURT: THANK YOU.

14 MR. TORJESEN: YOUR HONOR, I HAVE JUST A HOUSEKEEPING
09:01 15 MATTER.

16 CAN THE COURT GIVE US SOME GUIDANCE IN TERMS OF
17 WHAT IS A SCOPE OF THE PREEMPTION AS APPLIES TO HERE IN
18 TERMS OF WHAT ARE THE FACTS THAT FALL WITHIN THAT
19 PREEMPTION SO WE CAN LOOK AND SEE WHETHER WE CAN ON THE
20 FACTUAL BASIS OF IT PREEMPT? IT'S EASY TO SAY PLEAD WITH
21 RESPECT TO IT, BUT THERE'S BEEN A BIG ARGUMENT AS TO WHAT
22 THE SCOPE OF COPPA IS, AND I'M JUST ASKING WHAT WAS THE
23 COURT'S VIEW AS TO THAT SCOPE.

24 THE COURT: THANK YOU, COUNSEL.

25 COUNSEL.

26 MR. BROWN: WELL, THE COURT WILL OBVIOUSLY DECIDE FOR
27 ITSELF WHETHER IT WANTS TO GIVE ADVISORY RULINGS.

28 BUT, YOU KNOW, HERE, WE'VE GOT A SITUATION HERE

09:02

1 WHERE THIS IS THE FIFTH COMPLAINT BETWEEN THESE TWO CASES.
2 AND BOTH THE COHEN CASE AND THE METH CASE, THERE HAVE BEEN
3 TWO COMPLAINTS PREVIOUS TO THIS ALREADY FILED. THIS IS NOW
4 THE FIFTH COMPLAINT, THE CONSOLIDATED COMPLAINT, SO THERE
5 ARE NO SURPRISES HERE. WE'VE BRIEFED THIS SEVERAL TIMES
6 NOW.

7 THE COURT: OKAY. THIS IS THE RULING; THE TENTATIVE
8 STANDS.

9 COUNSEL, YOU WILL HAVE THE OPPORTUNITY TO
10 REDEFINE THE PROPOSED CLASS TO PLEAD CLAIMS THAT ARE NOT
11 PREEMPTED.

12 YOU'RE GOING TO GET 20 DAYS TO AMEND.

13 DEFENDANT FACEBOOK, YOU'RE GOING TO GIVE
14 NOTICE. THANK YOU.

09:03

15 MR. TORJESEN: THANK YOU, YOUR HONOR.

16

17 (PROCEEDINGS ADJOURNED AT 9:03 A.M.)

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 47 HONORABLE DEBRE K. WEINTRAUB, JUDGE

DAVID A. COHEN, A MINOR, BY AND)
THROUGH ROBIN S. COHEN AS GUARDIAN)
AD LITEM, SHELBY A. ORLAND, A MINOR,)
BY AND THROUGH MARCIA J. ORLAND AS)
GUARDIAN AD LITEM; FOR ALL OTHERS)
SIMILARLY SITUATED,)

PLAINTIFFS,)

VS.)

FACEBOOK, INC., A DELAWARE CORPORATION)
AND DOES 1 THROUGH 100, INCLUSIVE,)

DEFENDANTS.)

CASE NO. BC444482
REPORTER'S
CERTIFICATE

I, SUSIE PRICE, OFFICIAL COURT REPORTER OF THE
SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY
OF LOS ANGELES, DO HEREBY CERTIFY THAT THE FOREGOING PAGES,
1 THROUGH 12 INCLUSIVE, COMPRISE A FULL, TRUE AND CORRECT
TRANSCRIPT OF THE PROCEEDINGS HELD IN THE ABOVE-ENTITLED
MATTER ON SEPTEMBER 22, 2011.

DATED THIS 27TH DAY OF SEPTEMBER, 2011.

SUSIE PRICE, CSR#11954
OFFICIAL COURT REPORTER

3 **PROOF OF SERVICE**

4 I am a citizen of the United States and a resident of the State of California. I am
5 employed in San Diego County, State of California, in the office of a member of the bar of this
6 Court, at whose direction the service was made. I am over the age of 18 years, and not a party
7 to the within action. My business address is Cooley LLP, 4401 Eastgate Mall, San Diego,
8 California 92121. My e-mail address is lestrada@cooley.com. On September 30, 2011, I
9 served the following documents on the parties listed below in the manner(s) indicated:

10 1. **NOTICE OF ENTRY OF ORDER GRANTING FACEBOOK,
11 INC.'S DEMURRER TO THE FIRST MASTER CLASS ACTION
12 COMPLAINT**

- 13 (BY U.S. MAIL – CCP § 1013a(1)) I am personally and readily familiar with the
14 business practice of Cooley LLP for collection and processing of correspondence
15 for mailing with the United States Postal Service, and I caused such envelope(s)
16 with postage thereon fully prepaid to be placed in the United States Postal
17 Service at San Diego, California.
- 18 (BY MESSENGER SERVICE – CCP § 1011) I consigned the document(s) to an
19 authorized courier and/or process server for hand delivery on this date.
- 20 (BY FACSIMILE – CCP § 1013(e)) I am personally and readily familiar with the
21 business practice of Cooley LLP for collection and processing of document(s) to
22 be transmitted by facsimile and I caused such document(s) on this date to be
23 transmitted by facsimile to the offices of addressee(s) at the numbers listed
24 below.
- 25 (BY OVERNIGHT MAIL – CCP § 1013(c)) I am personally and readily familiar
26 with the business practice of Cooley LLP for collection and processing of
27 correspondence for overnight delivery, and I caused such document(s) described
28 herein to be deposited for delivery to a facility regularly maintained by Federal
Express for overnight delivery.
- (BY ELECTRONIC MAIL – CCP § 1010.6(a)(6)) Based on a court order or an
agreement of the parties to accept service by e-mail or electronic transmission, I
caused such documents described herein to be sent to the persons at the e-mail
addresses listed below at approximately 11:30 a.m. I did not receive, within a
reasonable time after the transmission, any electronic message or other indication
that the transmission was unsuccessful.

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on September 30, 2011, at San Diego, California.



Lisa A. Estrada